Supreme Court, U.S.
FILED

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No 091444 MAY 20 2010

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2009

In re DANIEL G ANDERSON, WILLIAM COLLITON, M D , RICHARD P. DELANEY, M D ; GAETANO MOLINARI, M.D , RICHARD LORIA, M D , LORENZO MARCOLIN, M D JAMES RONAN, M D , EDWARD SHERIDAN, M.D , EDWARD SOMA, M D , and RONALD USCINSKI, M D ,

Petitioners,

versus

BARACK HUSSEIN OBAMA,

Respondent

PETITION FOR WRIT OF MANDAMUS TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND SOUTHERN DIVISION, AND THE HONORABLE PETER J MESSITTE, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND SOUTHERN DIVISION

APPENDIX TO PETITION FOR A WRIT OF MANDAMUS

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UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

DANIEL G. ANDERSON, WILLIAM COLLITON, M.D.; RICHARD P. DELANEY, M.D , GAETANO MOLINARI, M D., RICHARD LORIA, M D.; LORENZO MARCOLIN, M.D ; JAMES RONAN, M D.; EDWARD SHERIDAN, M D , EDWARD SOMA, M D , and RONALD UCINSKI, M.D ,

Plaintiffs,

v.

BARACK HUSSEIN OBAMA, in his official capacity as President of the United States,

Defendant.

C A No 8 10-CV-00017-PJM

MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs hereby move pursuant to Federal Rule of Civil Procedure 65(b) for the issuance of a preliminary injunction directing Defendant President Barack Hussein Obama and the members of his White House staff, including all agents and employees of the President and the White House staff, from undertaking in the future to intimidate or coerce any member of the Congress to vote in favor of any health care bill, including any health care bill to be reported out of a formal House-Senate con-

ference committee or any merged health care bill informally negotiated by representatives of the House and Senate, or to vote in favor of any measure to cut off debate on any such bill, through the use of threats to take executive action or actions that adversely affect the member's constituents. The Court should grant the preliminary injunction for the reasons set forth in the accompanying memorandum of law.

R. Martin Palmer

Date Filed: January 15,2010

UNITED STATES DISTRICT COURT DISTRICT OF MARYLAND SOUTHERN DIVISION

DANIEL G. ANDERSON; WILLIAM COLLITON, M.D , RICHARD P. DELANEY, M.D., GAETANO MOLINARI, M.D ; RICHARD LORIA, M.D.; LORENZO MARCOLIN, M.D.; JAMES RONAN, M.D.; EDWARD SHERIDAN, M.D.; EDWARD SOMA, M.D.; and RONALD UCINSKI, M.D.,

Plaintiffs,

v.

BARACK HUSSEIN OBAMA, in his official capacity as President of the United States,

Defendant.

C.A. No. 8:10-CV-00017-PJM

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

Plaintiffs, by and through undersigned counsel, hereby submit this memorandum of law in support of their Motion for Preliminary Injunction.

STATEMENT OF FACTS

The Patient Protection and Affordable Care Act (H.R. 3590), hereinafter the Senate Bill, is a Senate health care reform bill that was introduced on the floor of the Senate

on November 18, 2009. On December 21, 2009, the Senate voted to cut off all further debate on the Senate Bill by a vote of 60 to 40, thereby ending a Republican filibuster of the Senate Bill. On December 24, 2009, the Senate voted to pass the bill by a vote of 60 to 39, with only Jim Bunning (R-KY) failing to vote.

In December 2009 prior to the aforementioned Senate votes, Defendant President Barack Obama and/or members of his White House Staff met in closed-door sessions with Senator Ben Nelson (D-NE) on several occasions. According to published news stories, during one or more of these closed-door meetings, Defendant President Obama and/or members of the White House staff with the knowledge and approval of the President, threatened to put Offutt Air Force Base on the Base Realignment and Closure (BRAC) list, thus slating the base for closure, unless Senator Nelson voted in favor of the Senate Bill and/or voted in favor of cutting off all further debate on the Senate Bill.
(*TheWeeklyStandard com*, Michael Goldfarb, "Source: Dems Threaten Nelson in Pursuit of 60, Dec. 15, 2009, attached hereto as "Exhibit 1") Offutt Air Force Base employs approximately 10,000 military and federal employees in southeastern Nebraska and it is the headquarters of the U.S. Strategic Command (STRATCOM), the successor to the Strategic Air Command. (See Letter signed by 20 GOP Senators, dated Dec. 16, 2009, addressed to Senators Carl Levin and John McCain ["Senators' Letter"], attached hereto as "Exhibit 2 ")

According to published news stories, a Senate aide to Senator Ben Nelson stated that the threat to place Offutt Air Force Base on the BRAC list was "a naked effort by Rahm Emanuel and the White House to extort Nelson's vote" and that the White House was "threatening to close a base vital to national security for what?"
(*TheWeeklyStandard com*, Michael Goldfarb, "Source:

Dems Threaten Nelson in Pursuit of 60, Dec. 15, 2009)

By a letter dated December 16, 2009, twenty Republican Senators requested the Senate Armed Services Committee to launch an investigation into the reports that the White House threatened to close Nebraska's Offutt Air Force Base unless Nebraska Senator Ben Nelson voted for the Senate Bill. In their letter to Senators Carl Levin (D-MI) and John McCain (R-AZ), the 20 Senators asked that "a hearing be held as to whether the BRAC process has been compromised." (Senators' Letter.)

The Senate subsequently, on December 21, 2009, passed a measure to cut off debate on the Senate health care reform bill by a vote of 60 to 40. Senator Nelson voted in favor of this measure. Thereafter, on December 24, 2009, the Senate voted to pass the Senate health care bill by a vote of 60 to 39 Senator Nelson voted in favor of passage of the bill.

The Senate Bill must now be reconciled or merged with a related House Bill (H.R. 3962, the Affordable Health Care for America Act) and the resulting reconciled bill or merged health care bill must be voted on again by both the House and the Senate. Negotiations between representatives from the House and Senate regarding the reconciliation or merging of the House Bill with the Senate Bill commenced the first week of January 2010

One or more members of the White House staff have made public statements that the President will be more closely involved than ever before in the legislative process regarding the House Senate negotiations and the final House and Senate votes on the merged or reconciled health care reform bill. *The Wall Street Journal* has reported that "Democratic leaders are already saying that this won't be the usual conference, with public votes, but will be negotiated by a few barons *plus White House Chief*

of Staff Rahm Emanuel in a backroom." (Wall Street Journal, Review & Outlook, "The Senate Postmortem," p. A10, c. 1, Dec 26-27, 2009 (emphasis added), attached hereto as Exhibit "3".) The *Baltimore Sun* similarly has reported that "[m]embers of the Obama administration, including the White House chief of staff Rahm Emanuel will also be heavily involved in the talks" to reconcile the House Bill with the Senate Bill. (The Baltimore Sun, News, "After passing 2 health bills, hill must now build bridge," p. 14, c. 1, Dec. 27, 2009, attached hereto as Exhibit "4".) The *Baltimore Sun* further reports that White House Deputy Press Secretary Bill Burton has said that, "We've got two bills, one in the House, one in the Senate, they're 95 percent similar. *We're going to be actively working to iron out the rest of the differences and get a bill passed* and signed." (Id. (emphasis added).)

Given the actions of the Defendant and his White House staff with respect to Senator Nelson in order to coerce his vote on the Senate Bill, there is an imminent danger that the President will again engage in ultra vires and unconstitutional acts of threatening one or more members of Congress with executive action adverse to their constituents unless those members vote in favor of the reconciled or merged health care bill and/or in favor of a measure cutting off all further debate on such reconciled or merged bill.

ARGUMENT

I. Plaintiffs Have Shown That They Are Likely To Succeed On The Merits.

The purpose of preliminary equitable relief is "to preserve the status quo pending the outcome of litigation." *Cobell v. Kempthorne*, 455 F.3d 301, 314 (D.C. Cir. 2006), *cert denied*, 549 U.S. 1317 (2007), quoting Dist. 50, *United Mine Workers of Am. v. Int'l Union, United Mine Workers of Am.*, 412 F.2d 165, 168 (D.C. Cir. 1969). To obtain a pre-

liminary injunction, the moving party must show (1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest *Winter v. Natural Resources Defense Council*, 129 S. Ct. 365, 374 (2008); *Real Truth About Obama, Inc. v FEC*, 575 F.3d 342, 346-347 (4th Cir. 2009). The plaintiff bears the burden of showing that each of these factors supports granting the injunction. *Direx Israel, Ltd. v Breakthrough Med. Corp* , 952 F 2d 802, 812 (4th Cir 1991).

As will be shown below, Plaintiffs meet the first factor as they are likely to succeed on the merits

A. The President Exceeds His Powers By Using His Executive Authority To Leverage Votes By Members Of Congress.

Article II of the United States Constitution provides in part that "[t]he executive Power shall be vested in a President . . .," US Const Art. II, § 1, cl 1; that "he shall take Care that the Laws be faithfully executed," *id.*, Art. II, § 3; and that he "shall be Commander in Chief of the Army and Navy of the United States" *Id.*, Art II, § 2, cl. 1.

Article II, Section 3 of the Constitution further requires that the President "from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient " US Const., Art. II, § 3.

The President also has a constitutional veto power Specifically, after a bill has passed both Houses of Congress, but "before it becomes a Law," the bill must be presented to the President. If he approves, "he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter

the objections at large on their Journal, and shall proceed to reconsider it." U.S. Const , Art. I, § 7, cl. 2. The President's "return" of a bill, which is commonly described as a veto, can be overridden by a two-thirds vote in each house *Id.*

As the Supreme Court has recognized, in the framework of the Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S 579, 587 (1952). The Constitution limits the President's functions in the lawmaking process "to the recommending of laws he thinks wise and the vetoing of laws he thinks bad." *Id.*

On the other hand, "the Constitution is neither silent nor equivocal about who shall make laws that the President is to execute." *Youngstown Sheet & Tube Co v Sawyer*, 343 U.S. at 587. Article I of the Constitution provides that, "All legislative powers herein granted shall be vested in a Congress of the United States . . ." US Const. Art. I, § 1. The Constitution further provides that Congress may "make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof" US Const. Art. I, § 8, cl 18.

As the Supreme Court held in *Youngstown Sheet & Tube Co. v. Sawyer*, in invalidating President Truman's executive order seizing the Nation's steel mills, the Constitution does not subject this exclusive lawmaking power of Congress "to presidential . . . supervision or control " 343 U S at 588. Congress has "exclusive constitutional authority to make laws necessary and proper to carry out the powers vested by the Constitution 'in the Government of the United States, or any Department or Officer thereof.'" Id. at 588-589 (emphasis added), quoting U.S. Const , Art I, § 8, cl 18. The Nation's Founders

"entrusted the lawmaking power *to Congress alone* in both good times and bad times." *Id.* at 589 (emphasis added)

The President admittedly can help shape legislation prior to its presentment to him for signature. Through statements of administration policy, staff and presidential discussions with members of Congress wherein the views of the President and the arguments in favor of those views are made known to such members, and public statements, the President can influence legislation. In addition, the President, pursuant to his Article I power to veto legislation, may prior to presentment threaten to veto legislation that contains what he considers to be unconstitutional provisions, or provisions that he objects to on policy grounds, and may thereby convince or coerce Congress to remove those provisions.

Aside from his authority to issue veto threats, however, it is respectfully submitted that the President cannot, prior to presentment, use a threat to exercise an otherwise legitimate executive power, confided to him under Article II of the Constitution, to intimidate or coerce individual members of the House of Representatives, or to intimidate or coerce individual members of the Senate, in the exercise of their exclusive constitutional authority to make laws, without improperly exceeding his authority under the Constitution and thereby acting ultra vires. Decisions as to whether or not to vote for a particular bill, or whether or not to vote to cut off debate on a bill, are exclusively legislative decisions for the members of Congress to make. That is the clear implication of the Supreme Court's holding in *Youngstown Sheet & Tube Co. v. Sawyer* that "Congress alone" may exercise the lawmaking power. Therefore it constitutes a breach of trust and an abuse of the power confided in the President by Article II for the President to attempt to impose his views on the members of Congress that a particular bill

should become law, or that debate on a particular bill should be cut off, through coercion or intimidation of individual members of Congress, by threatening to take executive action that adversely affects a member's House District or State unless that member votes in favor of a particular bill.

In this case, Plaintiffs have alleged that, in or about December 2009 President Obama and/or one or more of the members of his White House Staff acting with his knowledge and approval, during one or more closed-door meetings, threatened a member of the United States Senate, namely Senator Ben Nelson of Nebraska, that the President would take action to shut down the Strategic Command base currently located within the State of Nebraska, with an attendant loss of thousands of jobs and millions of dollars of revenue to that State, unless Senator Nelson voted in favor of passage of the Senate Bill and/or voted in favor of a measure to cut off all debate on the Senate Bill. In view of the above principles of constitutional law and assuming discovery bears out these factual allegations, Plaintiffs are likely to succeed on the merits of their contention that by threatening to take executive action adverse to the State of Nebraska unless Senator Nelson voted in favor of passage of the Senate Bill, the President abused his power and authority and acted in excess of his powers under the Constitution.

B. The President's Actions Using His Executive Authority To Leverage Votes By Members Of Congress Violates The Principle Of Separation of Powers.

The principle of separation of powers, although not expressed in the Constitution in so many words, underlies and undergirds it. Thus, "[t]he Constitution sought to divide the delegated powers of the new Federal Government into three defined categories, Legislative, Executive, and Judicial." *INS v. Chadha*, 462 US 919,

951 (1983). "The declared purpose of the separating and dividing the powers of government was to '[diffuse] power the better to secure liberty.'" *Bowsher v. Synar*, 478 U.S 714, 721 (1986) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. at 635 (Jackson, J , concurring)). "Justice Jackson's words echo the famous warning of Montesquieu, quoted by James Madison in The Federalist No. 47, that '"there can be no liberty where the legislative and executive powers are united in the same person, or body of magistrates" ..'" Id (quoting The Federalist No 47, p. 325 (J. Cooke ed., 1961)).

As Mr Justice Brandeis once wrote, "[t]he doctrine of separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was, not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy" *Myers v. United States*, 272 U.S. 52, 240, 293 (1926) (Brandeis, J., dissenting); see also *Youngstown Sheet & Tube Co v Sawyer*, 343 U.S. at 613 (Frankfurter, J , concurring), where Mr. Justice Frankfurter, in his concurring opinion, observed that "I know of no more impressive words on this subject than those of Mr Justice Brandeis" in Myers

The Supreme Court more recently, in an opinion by Chief Justice Burger, further recognized:

> That this system of division and separation of powers produces conflicts, confusion, and discordance at times is inherent, *but it was deliberately so structured to assure full, vigorous, and open debate on the great issues affecting the people and to provide avenues for the operation of checks on the exercise of governmental power.*

Bowsher v. Synar, 478 U.S at 722 (emphasis added).

In 1792, Thomas Jefferson related how he told President George Washington that concentration of both legislative and executive powers in the Executive Branch was dangerous:

> "I said to [President Washington] that if the equilibrium of the three great bodies, Legislative, Executive and Judiciary, could be preserved, if the Legislature could be kept independent, I should never fear the result of such a government, but that *I could not but be uneasy when I saw that the Executive had swallowed up the Legislative branch.*"

Thomas Jefferson The Anas, 1792 ME 1:318 (emphasis added).

Mr Justice Douglas, perhaps alluding to this concern of Thomas Jefferson, observed in his concurring opinion in *Youngstown Sheet & Tube v Sawyer*, 343 U.S. 579, 629, 633 (1952):

> "The tragedy of such stalemates might be avoided by allowing the President use of some legislative authority *The Framers with memories of the tyrannies produced by a blending of executive and legislative power rejected that political arrangement . . Such a step would most assuredly alter the pattern of the Constitution* "

(Emphasis added.)

In view of the above, Plaintiffs are likely to succeed on the merits of their contention that a President cannot use or abuse his constitutional executive powers as leverage to gain control over the exercise of the constitutional leg-

islative powers of Congress without improperly blending executive and legislative power and concentrating such dual power in the Executive branch, in violation of the doctrine of separation of powers. President Obama, by using or abusing his executive powers to coerce an individual member of the Senate to vote in favor of the Senate Bill and/or to vote in favor of cutting off all further debate on the Senate Bill and, by this action, implicitly sending a message that he is prepared, if necessary, to engage in further coercion of members of Congress to pass the merged or reconciled health care reform bill that will emerge out of the House-Senate negotiations, has sought to usurp, absorb, gain control over and/or use the exclusive legislative authority of Congress in violation of the doctrine of separation of powers.

In sum, Plaintiffs are likely to succeed on the merits of their argument that, to avoid the Executive from swallowing up the Legislative branch and prematurely cutting off full, vigorous and open debate on one of the great issues of the present time, health care reform, the President must be restrained from continuing to engage in the use or abuse of his executive powers to coerce individual members of Congress to vote in favor of any health care reform bill that the President favors, or in favor of cutting off debate on any such health care reform bill.

II. Plaintiffs Will Likely Be Irreparably Harmed Absent Issuance Of A Preliminary Injunction.

A plaintiff must make a "clear showing" of a likelihood irreparable harm because the basis of injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies. *See Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d at 812. The required irreparable harm must be neither remote nor speculative but actual and imminent. *Id.*

"Unlike monetary injuries, constitutional violations cannot be adequately remedied through damages and therefore generally constitute irreparable harm." *Nelson v. NASA*, 530 F.3d 865, 882 (9th Cir. 2008), *pet for cert. filed* Nov. 2, 2009 (Sup. Ct.) (No 09-530) , citing *Monterey Mechanic Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997) ("[A]n alleged constitutional infringement will often alone constitute irreparable harm "); *see also Preston v Thompson*, 589 F.2d 300, 303 n 3 (7th Cir. 1978) ("The existence of a continuing constitutional violation constitutes proof of an irreparable harm, and its remedy would certainly serve the public interest.") Plaintiffs have alleged that the defendant, President Obama, has acted unconstitutionally and is threatening to continue to so act, in excess of his constitutional executive powers, and in violation of the constitutional doctrine of the separation of powers, by seeking to usurp legislative power by coercing members of Congress to vote in favor of a health care reform bill that he favors through threats to exercise his executive powers to adversely affect Congressional members' constituents. These violations cannot be adequately remedied through awards of monetary damages, even assuming the President were not immune from an action for damages

Furthermore, Plaintiff physicians will further be irreparably harmed by the alleged actions of the President in usurping legislative power to ensure the imminent passage of a health care reform bill containing most, if not all, of the elements of the Senate Bill that the President caused to be passed by his unconstitutional actions directed towards Senator Ben Nelson As Dr Delaney has summarized in his affidavit attached to the Complaint, passage of such a bill would have a severe detrimental effect on the practice of medicine and on the nature of physician-patient relationship, injuries that by their very nature cannot be remedied through an award

of money damages

Finally, the irreparable harm is actual and imminent Defendant has already abused his executive powers in an effort to leverage control over the vote of a key moderate Senator in order to have the Senate Bill pass by a single vote margin just before Christmas 2009 The White House has indicated that the President and members of the White House staff will, if anything, be more closely involved in the negotiations this month leading to the reconciliation of the Senate Bill with the House Bill, and in getting the resulting merged bill passed in both the House and Senate by early February 2010. Thus, a real and imminent danger exists that, in order to ensure passage of the merged health care reform bill, the President will again resort to abusing his executive power to threaten one or more moderate Democratic Senators and House members with executive action adverse to their constituents unless they vote in favor of the merged bill

In short, Plaintiffs have made a clear showing that they are likely to suffer irreparable harm absent issuance of a preliminary injunction

III. The Balance of Equities Tips in Favor of Issuing the Requested Preliminary Injunction.

The balance of equities tips decidedly in favor of the Plaintiffs. The likelihood of irreparable harm if a preliminary injunction does not issue is very great, since the unconstitutional actions of the President in abusing his executive powers in order to leverage and obtain control over the legislative branch of the Government with respect to the passage of a health care reform bill cannot be adequately remedied by an award of monetary damages. If a preliminary injunction does not issue, the President will be free to continue to usurp legislative power at the expense of Congress in violation of the fundamental principle of separation of powers and thereby

obtain passage of a health care bill long before the factual and legal issues raised by the instant matter can be resolved.

On the other hand, issuance of a preliminary injunction will result in little or no harm to the President. The preliminary injunction simply restrains the President from engaging in coercive actions that exceed his powers under the Constitution and improperly infringe upon the exclusive legislative powers of Congress. The President will remain free to fully exercise his constitutional powers of recommending legislation and to veto and threaten to veto legislation.

Thus, the likelihood of irreparable harm to Plaintiffs far outweighs the harm, if any, to the President.

IV. The Public Interest Favors Issuance of the Requested Preliminary Injunction.

The Fourth Circuit has recognized that, "upholding constitutional rights serves the public interest" *Newsom v. Albemarle County School Bd.*, 354 F.3d 249, 261 (4th Cir 2003). The Seventh Circuit has likewise recognized that remedying constitutional violations "certainly serve the public interest." *Preston v. Thompson*, 589 F.2d at 303 n. 3.

In this case, issuance of a preliminary injunction to prevent the President from continuing to use and abuse his executive powers to obtain control over the exercise of legislative power by the Congress, through the coercion of its members, would certainly serve the public interest. Preservation of the principle of separation of powers is necessary to prevent the exercise of tyranny to the grave detriment of the citizenry of the United States.

CONCLUSION

As Plaintiffs have demonstrated all four elements for the issuance of a preliminary injunction, Plaintiffs

respectfully request that their motion for a temporary restraining order be granted, and that an Order be entered temporarily restraining the President and the members of his White House staff, including all agents and employees of the President and the White House staff, from undertaking in the future to intimidate or coerce any member of the Congress to vote in favor of any health care bill, including any health care bill to be reported out of a formal House-Senate conference committee or any merged health care bill informally negotiated by representatives of the House and Senate, or to vote in favor of a measure to cut off debate on any such bill, through the use of threats to take executive action or actions that adversely affect the member's constituents.

Respectfully submitted,

/s/ _____
R. Martin Palmer

Date Filed: 01/15/10

EXHIBIT 1

Source: White House threatening Sen. Nelson with military base closures in Neb.

By: Michael Goldfarb

The Weekly Standard

12/15/09 1:52 PM EST

According to a Senate aide, the White House is now threatening to put Nebraska's Offutt Air Force Base on the BRAC list if Nelson doesn't fall into line.

While the Democrats appease Senator Lieberman, they still have to worry about other recalcitrant Democrats including Nebraska Senator Ben Nelson. Though Lieberman has been out front in the fight against the public option and the Medicare buy-in, Nelson was critical of both. Now that those provisions appear to have been stripped from the bill, Lieberman may get on board, but Nelson's demand that taxpayer money not be used to fund abortion has still not been met.

Offutt Air Force Base employs some 10,000 military and federal employees in Southeastern Nebraska. As our source put it, this is a "naked effort by Rahm Emanuel and the White House to extort Nelson's vote." They are "threatening to close a base vital to national security for what?" asked the Senate staffer.

Indeed, Offutt is the headquarters for US Strategic Command, the successor to Strategic Air Command, and not by accident STRATCOM was located in the middle of the country for strategic reasons. Its closure would be a massive blow to the economy of the state of Nebraska, but it would also be another example of this administration playing politics with our national security.

EXHIBIT 2

United States Senate

WASHINGTON, DC 20510

December 16, 2009

The Honorable Carl Levin
Senate Armed Services Committee
Russell Senate Office Building, Room 228
Washington, D C. 20510 .

The Honorable John McCain
Senate Armed Services Committee
Russell Senate Office Building, Room 228
Washington, D.C. 20510

Dear Senator Levin and Senator McCain:

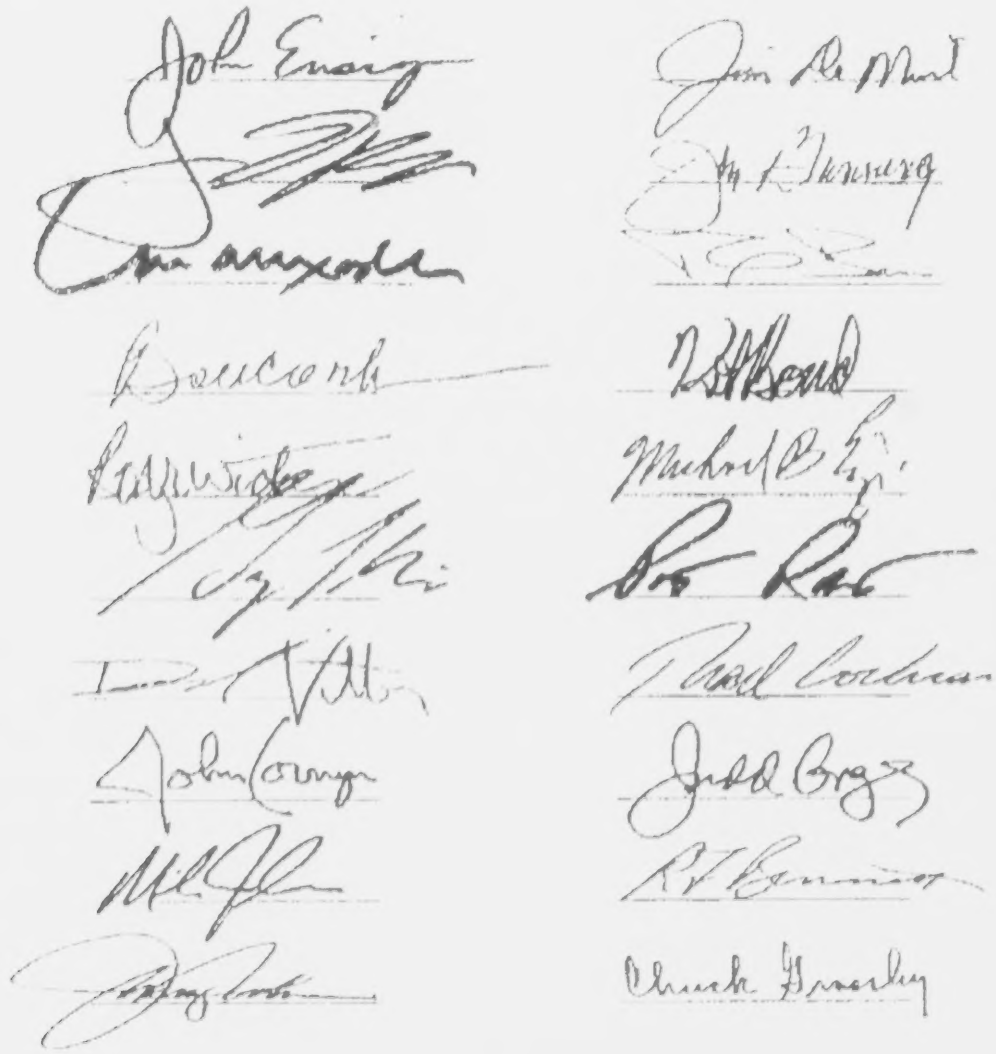
It has been reported that the Obama Administration threatened the closure of a U S military installation for political purposes, thereby bringing into question the integrity of the Base Realignment and Closure (BRAC) process. The BRAC process was established to remove political influence so that the decision to close or not to close a military installation could be based upon military utility.

Specifically, various media reports have stated that the Obama Administration would put Offutt AFB in south-eastern Nebraska on a future BRAC list because of a vote on healthcare reform While we recognize the importance of Offutt AFB as the headquarters of U.S. Strategic Command and the approximately 10,000 individuals that work there, we feel that this installation should remain open or be closed on its own merits.

Therefore, we respectfully ask that a hearing be held as to whether the BRAC process has been compromised We do

not want to see the name of a base from our state on a BRAC list and think it has been put there to settle partisan scores We also do not want our bases to be more vulnerable to closure because political arm-twisting has taken another installation off the table, National security not partisanship should determine how BRAC decisions are made.

Sincerely,



UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

PETER J MESSITTE
UNITED STATES DISTRICT JUDGE

6500 CHERRYWOOD LANE
GREENBELT, MARYLAND 20770
(301) 344-0632

M E M O R A N D U M

TO: Counsel of Record

FROM: Judge Peter J. Messitte

Re: Anderson, et al. v. Obama

Civil No. PJM 10-17

DATE. February 17, 2010

* * * * * * * * *

This will confirm that argument on [4] Plaintiffs' Motion for Preliminary Injunction filed January 15, 2010 and [31] Defendant's Motion to Dismss filed February 8, 2010 will be heard on March 18, 2010 at 10.00 a.m. (Courtroom 4C) The parties will be allotted one and one half hours for total argument. Counsel should advise in writing immediately if they expect oral argument to exceed the allotted timeframe

PLEASE NOTE, however, that Judge Messitte may choose to decide this motion on the pleadings before the date scheduled for argument. If so, you will be notified sufficiently in advance of that date.

PLEASE ALSO NOTE: Counsel should bring copies for both the Court and opposing counsel of the principal cases on which they intend to rely during oral argument. Please also highlight the appropriate text

/s/
PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

DISTRICT OF MARYLAND

DANIEL G. ANDERSON; WILLIAM COLLITON, M.D.; RICHARD P. DELANEY, M.D.; GAETANO MOLINARI, M.D.; RICHARD LORIA, M.D.; LORENZO MARCOLIN, M.D.; JAMES RONAN, M.D.; EDWARD SHERIDAN, M.D.; EDWARD SOMA, M.D.; and RONALD UCINSKI, M.D.,

Plaintiffs,

v

BARACK HUSSEIN OBAMA, in his official capacity as President of the United States,

Defendant.

C.A. No. 8:10-CV-00017-PJM

RENEWED MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs hereby move pursuant to Federal Rule of Civil Procedure 65(b) for the issuance of a preliminary injunction enjoining and restraining the Defendant President from signing any health care reform bill that originated in the Senate that is then passed by the House of Representatives and presented to President for his signature, or from signing any health care reform bill that is passed by the House of Representatives pursuant to a House rule that "deems" the bill to have been passed

without a direct vote on the bill being taken by the members of the House of Representatives, or, in the alternative, enjoining the enforcement and implementation of any such health care reform bill after it is signed by the President. The Court should grant the preliminary injunction for the reasons set forth in the accompanying memorandum of law.

/s/_____

R. Martin Palmer

Date Filed: March 18, 2010

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

DANIEL G. ANDERSON; WILLIAM COLLITON, M.D.; RICHARD P. DELANEY, M D , GAETANO MOLINARI, M D ; RICHARD LORIA, M.D.; LORENZO MARCOLIN, M.D.; JAMES RONAN, M.D., EDWARD' SHERIDAN, M D.; EDWARD SOMA, M D.; and RONALD UCINSKI, M.D.,

Plaintiffs,

v.

BARACK HUSSEIN OBAMA, in his official capacity as President of the United States,

Defendant.

C A No. 8·10-CV-00017-PJM

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

Plaintiffs, by and through undersigned counsel, hereby submit this memorandum of law in support of their Motion for Preliminary Injunction.

STATEMENT OF FACTS

The Patient Protection and Affordable Care Act (H.R. 3590), hereinafter the Senate Bill, is a Senate health care reform bill that was introduced on the floor of the Senate on November 18, 2009, and therefore originated in the Senate. On December 21, 2009, the Senate voted to cut off all further debate on the Senate Bill by a vote of 60 to 40, thereby ending a Republican filibuster of the Senate Bill. On December 24, 2009, the Senate voted to pass the bill by a vote of 60 to 39, with only Jim Bunning (R-KY) failing to vote.

On January 19, 2010, in a special election held in the State of Massachusetts, Scott Brown (R MA) was elected to the Senate, ending the Democrats' 60-member, filibuster-proof majority in the Senate. As a result, the House Democratic leadership has decided to undertake to pass the Senate Bill through the House of Representatives, instead of attempting to conference with the Senate on a compromise or reconciled bill that would then be passed by both houses of Congress before being presented to the President for his signature, even though (a) the Senate Bill was initiated in the Senate and (b) the Senate Bill contains several provisions imposing new taxes and increasing existing taxes.

In addition, the House Democratic leadership is actively considering securing the passage of the Senate Bill through the House of Representatives through a House rules procedure commonly known as "Deem and Pass" or the "Slaughter Rule", whereby no direct vote will be taken by the members of the House of Representatives on the Senate Bill Instead the members of the House of Representatives will vote directly on a companion or "sidecar" reconciliation bill of amendments to the Senate Bill and the Senate Bill will then be "deemed" to have passed the House of Representatives.

On information and belief, a vote in the House of Representatives on the Senate Bill, and/or a vote in the House of Representatives on the companion reconciliation measure that will be "deemed" to have resulted in the passage by the House of the Senate Bill, has been scheduled for as early as Saturday, March 20, 2010.

ARGUMENT

I. Plaintiffs Have Shown That They Are Likely To Succeed On The Merits.

The purpose of preliminary equitable relief is "to preserve the status quo pending the outcome of litigation." *Cobell v. Kempthorne*, 455 F.3d 301, 314 (D.C. Cir. 2006), *cert. denied*, 549 U.S. 1317 (2007), quoting *Dist. 50, United Mine Workers of Am. v. Int'l Union, United Mine Workers of Am.*, 412 F.2d 165, 168 (D.C. Cir. 1969). To obtain a preliminary injunction, the moving party must show (1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest. *Winter v. Natural Resources Defense Council*, 129 S. Ct. 365, 374 (2008); *Real Truth About Obama, Inc. v. FEC*, 575 F.3d 342, 346-347 (4th Cir. 2009). The plaintiff bears the burden of showing that each of these factors supports granting the injunction. *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 812 (4th Cir. 1991).

As will be shown below, Plaintiffs meet the first factor as they are likely to succeed on the merits.

A. Passage by the House of the Senate Bill Violates the Origination Clause.

The Origination Clause mandates that "[a]ll bills for raising Revenue shall originate in the House of Representatives." U.S. Const., Art. I, § 7, cl. 1; see *United States v. Munoz-Flores,* 495 U.S. 385, 387 (1990). As the Supreme Court elaborated in Munoz-Flores,

> In the case of "Bills for raising Revenue," § 7 requires that they originate in the House before they can be properly passed by the two Houses and presented to the President. The Origination Clause is no less a requirement than the rest of [Section 7] because 'it does not specify what consequences follow from an improper origination,' post, at 402. None of the Constitution's commands explicitly sets out a remedy for its violation Nevertheless, the principle that the courts will strike down a law when Congress has passed it in violation of such a command has been well settled for almost two centuries See, e.g., Marbury v Madison, 1 Cranch 137, 176-180 (1803). That principle applies whether or not the constitutional provision expressly describes the effects that follow from its violation

495 U.S. at 396-397

The bill in question, moreover, is one for "raising Revenue." Thus, the Senate Bill raises revenue through the imposition of taxes, fees, and limits on deductions,

including, but not limited to, a tax on cosmetic surgery, higher payroll taxes on top earners, a tax on high end, "luxury" health insurance plans, the imposition of fees on health insurance companies, the imposition of fees on drug manufacturers, the imposition of fees on the manufacturers of medical devices, the setting of a higher floor for deducting medical expenses, and the imposition of a cap on flexible health spending accounts. Furthermore, the health care subsidies and programs financed by these taxes will benefit groups of citizens who are "entirely unrelated to the persons paying for the program[s]." See *United States v. Munoz-Florez*, 495 U.S. at 400 n. 7 (not reaching question "[w]hether a bill would be 'for raising Revenue' where the connection between payor and program was more attenuated . . .").

Secondly, the bill in question, The Patient Protection and Affordable Care Act (H.R. 3590), hereinafter "the Senate Bill," is a Senate health care reform bill that was initiated in the Senate by being introduced on the floor of the Senate on November 18, 2009. Consequently, passage of this revenue-raising bill by the House of Representatives fails to meet the requirements of the Origination Clause and would render any resulting law subject to being struck down as null and void.

B. Deeming the Senate Bill Passed by the House Violates the Requirements of Article I, Section 7.

Article I, Section 7 of the Constitution that, in order for a bill to "become a law," the exact same bill with the exact same text must be approved by both the House and the Senate before the that text is presented to the President to be signed. See U.S. Const. Art. I, § 7; *Clinton v. City of New York*, 524 U.S. 417, 448 (1998).

On information and belief, the House Rules Committee, under the chairmanship of Louise Slaughter (D-NY) is in the process of crafting a rule that will "deem" the Senate

Bill to have passed, even though it will not be voted on directly by the members of the House, which rule is known as "Deem and Pass" or the "Slaughter Rule." Specifically, the members of the House will vote on a companion or "sidecar" bill that contains a package of amendments to the Senate Bill, and pursuant to the newly crafted House rule the Senate Bill will be "deemed" to have passed with the approval of the companion measure.

Voting on a companion reconciliation or sidecar bill, containing a package of amendments to the Senate Bill, which vote is then "deemed" by a House rule to constitute passage of the Senate Bill itself, is not a vote on the exact same bill and the exact same text as the bill that the Senate voted on, and would violate the requirements of Article I, Section 7 of the Constitution for when a bill can "become a law."

In sum, Plaintiffs are likely to succeed on the merits of the constitutional claims that passage by the House of the Senate Bill will result in a bill that violates the Origination Clause and/or cannot "become a law" for failure to meet the requirements of Article I, Section 7 of the Constitution.

II. Plaintiffs Will Likely Be Irreparably Harmed Absent Issuance Of A Preliminary Injunction.

A plaintiff must make a "clear showing" of a likelihood irreparable harm because the basis of injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies *See Direx Israel, Ltd. v. Breakthrough Med. Corp* , 952 F.2d at 812. The required irreparable harm must be neither remote nor speculative but actual and imminent. *Id*

"Unlike monetary injuries, constitutional violations cannot be adequately remedied through damages and therefore generally constitute irreparable harm." *Nelson*

v. NASA, 530 F.3d 865, 882 (9th Cir. 2008), *pet. for cert. filed* Nov. 2, 2009 (Sup. Ct.) (No 09-530) , citing *Monterey Mechanic Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir 1997) ("[A]n alleged constitutional infringement will often alone constitute irreparable harm."); *see also Preston v. Thompson*, 589 F.2d 300, 303 n 3 (7th Cir. 1978) ("The existence of a continuing constitutional violation constitutes proof of an irreparable harm, and its remedy would certainly serve the public interest."). Plaintiffs have alleged in their proposed Second Amended Complaint that passage by the House of the Senate Bill will violate the Origination Clause and/or the requirements of Article I, Section 7 of the Constitution. These constitutional violations cannot be adequately remedied through awards of monetary damages.

Furthermore, Plaintiff physicians will further be irreparably harmed if the requested preliminary injunction does not issue. As Drs Delaney and Ucinsky have summarized in their affidavits attached to the proposed Second Amended Complaint, passage, enforcement, and implementation of the Senate bill would have a severe detrimental effect on the doctors' practice of medicine, on the health and well being of their patients, and on the nature of the unique physician-patient relationship, injuries that by their very nature cannot be remedied through an award of money damages

Finally, the irreparable harm is actual and imminent A vote in the House of Representatives on the Senate Bill, and/or a vote in the House of Representatives on the companion reconciliation measure that will be "deemed" to have resulted in the passage by the House of the Senate Bill pursuant to the "Slaughter Rule", has been scheduled for as early as Saturday, March 20, 2010

In short, Plaintiffs have made a clear showing that they are likely to suffer irreparable harm absent issuance of a preliminary injunction.

III. The Balance of Equities Tips in Favor of Issuing the Requested Preliminary Injunction.

The balance of equities tips decidedly in favor of the Plaintiffs. The likelihood of irreparable harm if a preliminary injunction does not issue is very great, since the unconstitutional passage of the Senate Bill by the House of Representatives cannot be adequately remedied by an award of monetary damages. If a preliminary injunction does not issue, the President will be free to sign, enforce and implement the resulting health care reform bill presented to him after its unconstitutional passage by the House.

On the other hand, issuance of a preliminary injunction will result in little or no harm to the President. The preliminary injunction simply restrains the President from engaging in coercive actions that exceed his powers under the Constitution and improperly infringe upon the exclusive legislative powers of Congress. The President will remain free to fully exercise his constitutional powers of recommending legislation and to veto and threaten to veto legislation.

Thus, the likelihood of irreparable harm to Plaintiffs far outweighs the harm, if any, to the President.

IV. The Public Interest Favors Issuance of the Requested Preliminary Injunction.

The Fourth Circuit has recognized that, "upholding constitutional rights serves the public interest." *Newsom v Albemarle County School Bd.*, 354 F.3d 249, 261 (4th Cir. 2003). The Seventh Circuit has likewise recognized that remedying constitutional violations "certainly serve the public interest." *Preston v. Thompson,* 589 F.2d at 303 n. 3.

In this case, issuance of a preliminary injunction to prevent the President from continuing to use and abuse

his executive powers to obtain control over the exercise of legislative power by the Congress, through the coercion of its members, would certainly serve the public interest. Preservation of the principle of separation of powers is necessary to prevent the exercise of tyranny to the grave detriment of the citizenry of the United States.

CONCLUSION

As Plaintiffs have demonstrated all four elements for the issuance of a preliminary injunction, Plaintiffs espectfully request that their motion for a preliminary injunction be granted, and that an Order be entered temporarily restraining the President from signing any health care reform bill that originated in the Senate that is then passed by the House of Representatives and presented to President for his signature, or from signing any health care reform bill that is passed by the House of Representatives pursuant to a House rule that "deems" the bill to have been passed without a direct vote on the bill being taken by the members of the House of Representatives, or, in the alternative, enjoining the enforcement and implementation of any such health care reform bill after it is signed by the President.

Respectfully submitted,

R. Martin Palmer

Date Filed: March 18, 2010

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

DANIEL G ANDERSON, et al.

Plaintiffs,

v.

BARACK OBAMA, in his official capacity as President of the United States

Defendant

Civil No. PJM 10-17

O R D E R

Upon consideration of Defendant's Motion to Dismiss [Paper No. 31] and Plaintiffs' Opposition thereto, oral argument having been held thereon, it is for the reasons stated on the record, this 18th day of March, 2010

ORDERED

1. Defendant's Motion to Dismiss [Paper No 31] is GRANTED with prejudice as to Defendant Barack Obama;

2. Service of Plaintiffs' Motion to Amend [Paper No 42] and Second Amended Complaint [Paper No. 39] is deemed accomplished as to Defendants Nancy Pelosi, Steny Hoyer, and James Clyburn,

3. Defendants Pelosi, Hoyer, and Clyburn have fourteen (14) days from the day of this Order to file an opposition to the Motion to Amend; and

4. Plaintiffs have an additional fourteen (14) days to reply to the same.

/s/
PETER J MESSITTE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

DANIEL G. ANDERSON; WILLIAM COLLITON, M D ; RICHARD P. DELANEY, M.D.; GAETANO MOLINARI, M D ; RICHARD LORIA, M D.; LORENZO MARCOLIN, M.D.; JAMES RONAN, M.D.; EDWARD SHERIDAN, M.D , EDWARD SOMA, M.D.; and RONALD UCINSKI, M D.,

Plaintiffs,

v.

BARACK HUSSEIN OBAMA, in his official capacity as President of the United States,

Defendant.

C.A No. 8.10-CV-00017-PJM

MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

Plaintiffs hereby move pursuant to Fed R Civ. P. 15(a) for leave to file the attached proposed Second Amended Complaint. The Motion is supported by the attached Memorandum of Law Counsel for Defendant has been contacted and has indicated that they will oppose the Motion.

R. Martin Palmer

Date Filed March 18, 2010

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

DANIEL G. ANDERSON; JENNIFER R. BOYER; WILLIAM COLLITON, M.D.; RICHARD P. DELANEY, M.D.; GAETANO MOLINARI, M.D.; RICHARD LORIA, M.D.; LORENZO MARCOLIN, M.D., JAMES RONAN, M.D., EDWARD SHERIDAN, M.D.; EDWARD SOMA, M.D.; and RONALD UCINSKI, M.D.,

Plaintiffs,

v.

BARACK HUSSEIN OBAMA, in his official capacity as President of the United States, NANCY PELOSI, in her official capacity as Speaker of the House of Representatives, STENY HOYER, in his official capacity as Majority Leader of the House of Representatives, and JAMES E. CLYBURN, in his official capacity as the Majority Whip of the House of Representatives,

Defendants.

C.A. No. 8:10-CV-00017-PJM

SECOND AMENDED COMPLAINT

Plaintiffs, by way of complaint against the Defendants, allege the following:

NATURE OF ACTION

1. This is an action for declaratory, injunctive and other necessary and appropriate relief, brought under

the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., seeking (1) a declaratory judgment that the actions of the Defendant, President Barack Obama, and the members of his White House staff in intimidating and coercing Senator Ben Nelson of Nebraska to vote in favor of the Senate health care reform bill known as the Patient Protection and Affordable Care Act (H.R. 3590), and/or to vote in favor of a measure to cut off all further debate on such bill, by threatening to take executive actions detrimental to the citizens of Nebraska are (a) ultra vires acts in excess of the powers of the President, (b) an usurpation, absorption and use of constitutional legislative powers confided exclusively to Congress in violation of the doctrine of separation of powers, and (c) render any resulting reconciled or merged health care reform bill presented by Congress to the President null and void as a product of such ultra vires and unconstitutional acts, (2) the entry of an injunction directing and ordering Defendant President Obama to cease and desist from undertaking in the future to intimidate and coerce any member of the Congress to vote in favor of any health care bill, including the bill to be reported out of the House-Senate Conference, and/or to vote in favor of cutting off debate on any such bill by making threats to take executive action or actions that adversely affect the member's constituents, or, in the alternative, enjoining the enforcement of any resulting reconciled or merged health care reform bill that is presented by Congress to the President and that is signed by the President, (3) a declaratory judgment that the actions of the Defendants Nancy Pelosi, Steny Hoyer, and James E. Clyburn in attempting to pass and/or in obtaining the passage through the House of Representatives of a health care reform bill initiated in the Senate that raises revenues through the imposition of several new taxes and the increase in several existing taxes violates Article I, Section 7 of the United States Constitution, (4) a

declaratory judgment that the actions of the Defendants Nancy Pelosi, Steny Hoyer, and James E. Clyburn in attempting to pass and/or in obtaining the passage through the House of Representatives of the Senate health care reform bill without a direct vote by the members of the House on that bill, through a rules procedure known as "Deem and Pass" or the "Slaughter Rule", violates Article I, Section 7 of the United States Constitution; and (5) the entry of an injunction restraining Defendant President Obama from signing any health care reform bill that is passed by the House in violation of Article I, Section 7 of the United States Constitution and/or enjoining the enforcement of any such health care reform bill.

PARTIES

2. Plaintiff Daniel G. Anderson, a citizen of Maryland and a federal taxpayer who resides in Chevy Chase, Maryland, and who holds a degree in economics from Yale University, is a former officer in the U.S. Navy and veteran of the Korean War, and is now retired.

3. Plaintiff Jennifer R. Boyer, a citizen and resident of Washington, D.C. and a federal taxpayer, is a graduate of the University of Kentucky and has been admitted to the University of Kentucky's medical school.

4. Plaintiff William Colliton, M.D., a citizen of Maryland and a federal taxpayer, who resides in Bethesda, Maryland, is currently a Clinical Professor of Obstetrics and Gynecology at George Washington University Medical Center in Washington, D.C.

5. Plaintiff Richard P. Delaney, M.D., is a citizen of Maryland and a federal taxpayer, who resides in Silver Spring, Maryland, and is currently a General Practitioner with an active family practice of over fifty (50) years.

6. Plaintiff Richard Loria, M.D., is a citizen of Virginia and a federal taxpayer who resides in McLean, Virginia, whose medical specialty is Allergy and Immunology, and who currently works as a lecturer to the medical profession.

7. Plaintiff Lorenzo Marcolin, M.D , is a citizen of Maryland and a federal taxpayer who resides in Potomac, Maryland, and is an orthopedic physician.

8 Plaintiff Gaetano Molinari, M.D , is a citizen of Maryland and a federal taxpayer who resides in Chevy Chase, Maryland, and is currently a Neurologist and the Chairman Emeritus of the Department of Neurology at George Washington University in Washington, D C.

9 Plaintiff James Ronan, M.D., is a citizen of Maryland and a federal taxpayer who resides in Potomac, Maryland, and is a cardiologist and the author of cardiology textbooks that are used in the medical profession.

10 Plaintiff Edward Sheridan, M.D., a citizen and resident of Washington, D C. and a federal taxpayer, is a psychiatrist and the former Chairman of the Department of Psychiatry at Georgetown University.

11. Plaintiff Edward Soma, M D., is a citizen of Maryland and a federal taxpayer who resides in Kensington, Maryland, and is a radiologist, the Founding Chairman of the Department of Radiology and Nuclear Medicine of Holy Cross Hospital, and the former Chairman of the Board of the St. Jude's Hospital in Memphis, Tennessee

12. Plaintiff Ronald Ucinski, M D., is a citizen of Virginia and a federal taxpayer who resides in Great Falls, Virginia, is a neurosurgeon and a graduate of the Georgetown University School of Medicine, a Senior Surgeon with the U.S. Public Health Service, and an Assistant Professor in the Department of Neurological

Surgery, Georgetown University and George Washington University.

13. Defendant Barack Hussein Obama is the President of the United States.

14 Defendant Nancy Pelosi (D CA) is the Speaker of the House of Representatives.

15. Defendant Steny Hoyer (D MD) is the Majority Leader of the House of Representatives.

16. Defendant James E. Clyburn (D SC) is the Majority Whip of the House of Representatives.

JURISDICTION AND VENUE

17. Jurisdiction over this action is conferred by the federal question jurisdiction statute, 28 U S C. § 1331.

18. Venue is properly laid in this Court by virtue of 28 U.S.C §

1391(b).

FACTUAL BACKGROUND

19. The Patient Protection and Affordable Care Act (H.R 3590), hereinafter the Senate Bill, is a Senate health care reform bill that was initiated in the Senate by being introduced on the floor of the Senate on November 18, 2009

20. On December 21, 2009, the Senate voted to cut off all further debate on the Senate Bill by a vote of 60 to 40, thereby ending a Republican filibuster of the Senate Bill.

21. On December 24, 2009, the Senate voted to pass the bill by a vote of 60 to 39, with only Jim Bunning (R-KY) failing to vote.

22. On information and belief, in December 2009 prior to the aforementioned Senate votes, Defendant President Barack Obama and/or members of his White House Staff met in closed-door sessions with Senator Ben Nelson (D-NE) on several occasions

23 On information and belief, during one or more of these closed-door meetings, Defendant President Obama and/or members of the White House staff with the knowledge and approval of the President, threatened to put Offutt Air Force Base on the Base Realignment and Closure (BRAC) list, thus slating the base for closure, unless Senator Nelson voted in favor of the Senate Bill and/or voted in favor of cutting off all further debate on the Senate Bill.

24. Offutt Air Force Base employs approximately 10,000 military and federal employees in Southeastern Nebraska and it is the headquarters of the Strategic Command (STRATCOM), the successor to the Strategic Air Command.

25. On information and belief, a Senate aide to Senator Ben Nelson stated that the threat to place Offutt Air Force Base on the BRAC list was "a naked effort by Rahm Emanuel and the White House to extort Nelson's vote" and that the White House was "threatening to close a base vital to national security for what?"

26 On January 19, 2010, in a special election held in the State of Massachusetts, Scott Brown (R MA) was elected to the Senate, ending the Democrats' 60-member, filibuster proof majority in the Senate

27. As a result, the House Democratic leadership has decided to undertake to pass the Senate Bill through the House of Representatives, instead of attempting to conference with the Senate on a compromise or reconciled bill that would then be passed by both houses of Congress before being presented to the President for his signature,

even though (a) the Senate Bill was initiated in the Senate and (b) the Senate Bill contains several provisions imposing new taxes and increasing existing taxes.

28 In addition, the House Democratic leadership is actively considering securing the passage of the Senate Bill through the House of Representatives through a rules procedure commonly known as "Deem and Pass" or the "Slaughter Rule", whereby no direct vote will be taken by the members of the House of Representatives on the Senate Bill. Instead the members of the House of Representatives will vote directly on a companion or "sidecar" reconciliation bill of amendments to the Senate Bill and the Senate Bill will then be "deemed" to have passed the House of Representatives.

29. On information and belief, a vote in the House of Representatives on the Senate Bill, and/or a vote in the House of Representatives on the companion reconciliation measure that will be "deemed" to have resulted in the passage by the House of the Senate Bill, has been scheduled for as early as Saturday, March 20, 2010.

COUNT I - ULTRA VIRES CONDUCT

30. Plaintiffs hereby incorporate the allegations of Paragraphs 1 through 29 of their Complaint as if fully set forth herein at length

31 Article II of the United States Constitution provides in part that "[t]he executive Power shall be vested in a President . ."; that "he shall take Care that the Laws be faithfully executed"; and that he "shall be Commander in Chief of the Army and Navy of the United States "

32 Article II, Section 3 of the Constitution further requires that the President "from time to time give to the Congress Information of the State

of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient." Subsumed within this Article II, Section 3 directive is a requirement not to foment division between the States.

33. The President also has a constitutional veto power. Specifically, after a bill has passed both Houses of Congress, but "before it becomes a Law," the bill must be presented to the President. If he approves, "he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the objections at large on their Journal, and shall proceed to reconsider it." U.S. Const., Art. I, § 7, cl 2. The President's "return" of a bill, which is commonly described as a veto, can be overridden by a two-thirds vote in each house.

34. In the framework of the Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker

35 The Constitution limits the President's functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad

36 The Constitution is neither silent nor equivocal about who shall make laws that the President is to execute Article I of the Constitution provides that, "All legislative powers herein granted shall be vested in a Congress of the United States . . ," and further provides that Congress may "make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

37 The Constitution does not subject this exclusive lawmaking power of Congress to presidential supervision or control.

38. The President admittedly can help shape legislation prior to its presentment to him for signature. Through statements of administration policy, staff and presidential discussions with members of Congress wherein the views of the President and the arguments in favor of those views are made known to such members, and public statements, the President can influence legislation.

39. In addition, the President, pursuant to his Article I power to veto legislation, may prior to presentment threaten to veto legislation that contains what he considers to be unconstitutional provisions, or provisions that he objects to on policy grounds, and may thereby convince or coerce Congress to remove those provisions

40. Aside from his authority to issue veto threats, however, the President cannot, prior to presentment, use a threat to exercise an otherwise legitimate executive power, confided to him under Article II of the Constitution, to intimidate or coerce individual members of the House of Representatives, or to intimidate or coerce individual members of the Senate, in the exercise of their exclusive constitutional authority to make laws, without improperly exceeding his authority under the Constitution and thereby acting ultra vires.

41. Decisions as to whether or not to vote for a particular bill, or whether or not to vote to cut off debate on a bill, are exclusively legislative decisions for the members of Congress to make, and therefore it constitutes a breach of trust and an abuse of the power confided in the President for the President to attempt to impose his views on the members of Congress that a particular bill should become law, or that debate on a particular bill should be cut off, through coercion or intimidation of individual members of Congress, including by threatening to take executive action that adversely affects a member's House District or State unless that member votes in favor of a particular bill.

42. On information and belief, in or about December 2009 President Obama and/or one or more of the members of his White House Staff acting with his knowledge and approval, during one or more closed-door meetings, threatened a member of the United States Senate, namely Senator Ben Nelson of Nebraska, that the President would take action to shut down the Strategic Command base currently located within the State of Nebraska, with an attendant loss of thousands of jobs and millions of dollars of revenue to that State, unless Senator Nelson voted in favor of passage of the Senate Bill and/or voted in favor of a measure to cut off all debate on the Senate Bill.

43. In threatening to take executive action adverse to the State of Nebraska unless Senator Nelson voted in favor of passage of the Senate Bill, the President abused his authority and acted in excess of his powers under the Constitution.

44. The Senate subsequently, on December 21, 2009, passed a measure to cut off debate on the Senate health care reform bill by a vote of 60 to 40. Senator Nelson voted in favor of this measure.

45 Thereafter, on December 24, 2009, the Senate voted to pass the Senate health care bill by a vote of 60 to 39. Senator Nelson voted in favor of passage of the bill

46. On February 25, 2010, President Obama held a so-called "health care summit" at the White House, during which he went beyond his limited constitutional powers to participate in the legislative process as specified by Article I, Section 7 and Article II, Section 3 of the Constitution, by seeking directly to negotiate a health care measure with members of Congress as if President Obama and Vice President Joseph Biden were part of the legislative branch.

47. Article I, Section 7 of the Constitution limits the President's participation in the legislative process to a

veto after a bill has been passed, and precludes the President from participating in the legislative process leading up to the passage of a bill, which he sought to do at the health care summit.

48. On information and belief, there is an imminent danger that the President will again engage in ultra vires acts of threatening one or more members of the House of Representatives with executive action adverse to their constituents unless those members vote in favor of the Senate Bill and/or the companion/sidecar "reconciliation" bill setting forth certain amendments to the Senate Bill.

49. The Declaratory Judgment Act authorizes this Court, "[i]n a case of actual controversy within its jurisdiction, . . [to] declare the rights and other legal relations of any interested party seeking such declaration," and to grant "[f]urther necessary or proper relief" based on such declaratory judgment, see 28 U.S.C. §§ 2201, 2202.

50 The plaintiffs, including the plaintiff physicians, are "interested parties" as they will be adversely affected in the practice of their profession by the final passage of the Senate Bill and its presentation to the President for his signature, regardless of whether or not the companion reconciliation bill is subsequently passed by the Senate.

51. Plaintiff Richard P. Delaney, M D , in his affidavit attached hereto as Exhibit "A", has summarized the adverse effects that would result from the passage and signing into law of the Senate Bill, as follows:

a. Such passage will cause "the loss of the practice of medicine as we have known it",

b. Such passage "will eliminate that sacred binding of the dedicated physician and the sick patient",

c Such passage "will certainly insure that doctors who can retire will do so quickly, and they will remain retired",

d. Such passage will force sick patients "into an impersonal system" that does not know the patients' names and is "operated by clock-watching civil servants";

e. Such passage will force sick patients to wait for treatment, with such waiting "extending to months or even years";

f. Such passage will mean that fewer young students will opt to go to medical school "merely to become a government functionary";

g. Such passage will "deny[] free citizens access to the medical of their own choosing", and

h Such passage will "force physicians to practice medicine deficiently"

52. Plaintiff Ronald Ucinski, M D., in his affidavit attached hereto as Exhibit "B", has summarized the adverse effects that would result to his clinical practice, and to his patients' health, as follows

a Such passage would impose "additional layers of personnel who are to be involved with [medical care] decision making," involving "further delay, unnecessary effort, paperwork, and reduced efficiency, and ultimately, paralysis",

b. Such passage will mean that patients "are going to become more ill and even die while waiting for treatment, as has happened in every country that has adopted such a system";

c Such passage will make it more difficult for Dr Ucinski to keep his clinical practice "in the black";

d. Such passage will "drive away the very practitioners [of medicine] who have made health care in the United States the eminent system it has become and replace medical practice with medical processing"; and

e. Such passage will cause the country's "more capable citizens" to "seek medical care elsewhere [than the United States], as [users of] other socialized systems have indeed sought care here, before the advent of this prospective program."

53. Plaintiff Jennifer R. Boyer, in her affidavit attached hereto as Exhibit "C", states that she received an offer of admittance to medical school in the spring of 2009, that she deferred her acceptance and has spent almost a year "analyzing the cost of my dream [of becoming a doctor] against the benefit," and that she "would have gladly taken on the debt [of the cost of attending medical school] and the workload necessary to fulfill my dream because the relationships that doctors develop with their patients over an entire career are invaluable." In view of the prospective passage of President Obama's health care plan, however, Plaintiff Boyer believes that doctors will become "nothing more than a name on a list of providers," that "[t]he level of care doctors are able to provide will be limited to the allowed services on government-funded health insurance plans," and that she therefore thinks that it "makes more sense to become a Physician's Assistant."

54. Plaintiffs will also be adversely affected by the many unconstitutional provisions that are in the Senate Bill and likely will remain regardless of whether or not the amendments set forth in the companion reconciliation bill are passed by the Senate and signed into law by the President. A summary of three of the more glaring constitutional defects in the bills can be found in a recent Op-Ed piece in the Wall Street Journal, authored by Senator Orrin Hatch (R-Utah), Kenneth Blackwell, a senior fellow with the Family Research Council, and Kenneth A. Klukowski, a fellow and senior legal analyst with the American Civil Rights Union. (Wall Street Journal, Op-Ed Pages, January 2, 2010.)

WHEREFORE, Plaintiffs pray for the entry of judgment against the Defendant President Barack Hussein Obama

(A.) Declaring that the actions of the President and the members of his White House staff in intimidating and coercing Senator Ben Nelson to vote in favor of the Senate Bill and/or to vote in favor of cutting off further debate of the Senate Bill by threatening to take executive actions detrimental to the citizens of Nebraska are ultra vires acts in excess of the powers of the President;

(B.) Declaring that the actions of the President in holding a health care summit at the White House during which he sought to negotiate a health care measure with members of Congress as if he and the Vice President were part of the legislative branch are ultra vires acts in excess of the powers of the President;

(C.) Declaring any resulting health care reform bill presented by Congress to the President to be null and void as a product of such ultra vires and unconstitutional acts;

(D.) Enjoining the President and the members of his White House staff, including all agents and employees of the President and the White House staff, from undertaking in the future to intimidate and coerce any member of the Congress to vote in favor of any health care bill, including the Senate Bill, or to vote in favor of cutting off further debate on any such bill, by making threats to take executive action or actions that adversely affect the member's constituents;

(E.) Enjoining the enforcement of any resulting health care bill that is presented by Congress to the President and is signed by the President; and

(F.) For such additional and further relief as may be just or equitable.

COUNT II - VIOLATION OF SEPARATION OF POWERS

56. Plaintiffs hereby incorporate the allegations of Paragraphs 1 through 55 of their Complaint as if fully set forth herein at length.

57. The principle of separation of powers, although not expressed in the Constitution in so many words, underlies and undergirds it

58. As Mr. Justice Brandeis once wrote, "[t]he doctrine of separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was, not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy." *Myers v. United States*, 272 U.S. 52, 240, 293 (1926) (Brandeis, J., dissenting).

59. In Federalist No. 47, James Madison observed that, "*There can be no liberty where the legislative and executive powers are united in the same person* or body of magistrates . . .. The magistrate in whom the whole executive power resides cannot of himself make a law, though he can put a negative on every law . . .." (Emphasis added.)

60. In 1792, Thomas Jefferson related how he told President George Washington that "if the equilibrium of the three great bodies, Legislative, Executive and Judiciary, could be preserved, if the Legislature could be kept independent, I should never fear the result of such a government; but that *I could not but be uneasy when I saw that the Executive had swallowed up the Legislative branch.*"

61. In his concurring opinion in *Youngstown Sheet & Tube v. Sawyer*, 343 U.S. 579, 629, 633 (1952), Justice Douglas observed "The tragedy of such stalemates might be

avoided by allowing the President use of some legislative authority. *The Framers with memories of the tyrannies produced by a blending of executive and legislative power rejected that political arrangement.* . . . Such a step would most assuredly alter the pattern of the Constitution."

62. A President cannot use or abuse his constitutional executive powers as leverage to gain control over the exercise of the constitutional legislative powers of Congress without improperly blending executive and legislative power and concentrating such dual power in the Executive branch, in violation of the doctrine of separation of powers.

63. President Obama, by using or abusing his executive powers to coerce an individual member of the Senate to vote in favor of the Senate Bill and/or to vote in favor of cutting off all further debate on the Senate Bill and, by this action, implicitly sending a message that he is prepared, if necessary, to engage in further coercion of members of Congress to pass the reconciled health care reform bill that will be reported out of the House-Senate conference committee, has sought to usurp, absorb, gain control over and/or use the exclusive legislative authority of Congress in violation of the doctrine of separation of powers.

64. To avoid the Executive from swallowing up the Legislative branch, the President must be restrained from engaging in the use or abuse of his executive powers to coerce individual members of Congress to vote in favor of any health care reform bill that the President favors, or in favor of cutting off debate on any health care reform bill that the President favors.

WHEREFORE, Plaintiffs pray for the entry of judgment against the Defendant President Barack Hussein Obama

Declaring that the actions of the President and the members of his White House staff in intimidating and

coercing Senator Ben Nelson to vote in favor of the Senate Bill and/or to vote in favor of cutting off further debate on the Senate Bill by threatening to take executive actions detrimental to the citizens of Nebraska unconstitutionally have usurped, swallowed and absorbed the powers of the Legislative branch of the Government in violation of the doctrine of the separation of powers;

Declaring any resulting health care reform bill presented by Congress to the President to be null and void as a product of such ultra vires and unconstitutional acts;

Enjoining the President and the members of his White House staff, including all agents and employees of the President and the White House staff, from undertaking in the future to intimidate and coerce any member of the Congress to vote in favor of any health care bill, including the Senate Bill, or to cut off debate on any such bill by making threats to take executive action or actions that adversely affect the member's constituents,

Enjoining the enforcement and implementation of any resulting health care reform bill that is presented by Congress to the President and is signed by the President; and

For such additional and further relief as may be just or equitable

COUNT III - VIOLATION OF ORIGINATION CLAUSE

65. Plaintiffs hereby incorporate the allegations of Paragraphs 1 through 64 of their Complaint as if fully set forth herein at length.

66. Article I, Section 7, Clause 1 of the Constitution, the Origination Clause, states specifically that "[a]ll Bills for raising revenue shall originate in the

House; but the Senate may propose or concur with Amendments as on other Bills."

67. The Origination Clause incorporates the principle of "No taxation without representation."

68. Because the Senate is not representative of the people, but of the States, the Origination Clause requires that revenue raising bills must originate in the House of Representatives, which is representative of the people in order to ensure that the "no taxation without representation" principle is followed in the legislative process.

69. The Senate Bill that is now before the House of Representatives is not an amendment to the House Bill, but is rather a bill that originated in the Senate.

70. The Senate Bill is a revenue raising measure, in that it raises revenue through the imposition of taxes, fees, and limits on deductions, including, but not limited to, a tax on cosmetic surgery, higher payroll taxes on top earners, a tax on high end, "luxury" health insurance plans, the imposition of fees on health insurance companies, the imposition of fees on drug manufacturers, the imposition of fees on the manufacturers of medical devices, the setting of a higher floor for deducting medical expenses, and the imposition of a cap on flexible health spending accounts

71. If the House of Representatives passes the Senate Bill before the reconciliation process is begun, then the House will be passing a revenue raising bill that originated in the Senate and not in the House, in violation of Article I, Section 7, Clause 1 of the United States Constitution

72. If, on the other hand, the House of Representatives begins the reconciliation process first, involving the passage by the House of a package of amendments to the Senate Bill, in order to claim that the

health care bill "originated" in the House, such action would constitute a ruse or subterfuge to avoid the mandate of Article I, Section 7, Clause 1 that all revenue raising bills must originate in the House

73. The reconciliation process cannot initiate the passage of the Senate Bill in the House, since the Senate Bill has already been initiated in the Senate.

74. A re-initiation of the Senate Bill in the House of Representatives does not satisfy the mandate of the Origination Clause

WHEREFORE, Plaintiffs pray for the entry of judgment against the Defendants

(A.) Declaring that passage of the Senate Bill by the House of Representatives constitutes the passage of a revenue raising bill originating in the Senate in violation of Article I, Section 7, Clause 1 of the United States Constitution;

(B.) Declaring the Senate Bill, if passed by the House of Representatives and/or signed into law by the President, null and void as passed in violation of Article I, Section 7, Clause 1 of the United States Constitution; and

(C.) Enjoining the President from signing the Senate Bill upon it being passed by the House of Representatives and presented to President for his signature, and

(D.) Enjoining the enforcement and implementation of any resulting health care reform bill that is presented by Congress to the President and is signed by the President; and

(E.) For such additional and further relief as may be just or equitable.

COUNT IV – VOTE ON SAME BILL AS SENATE

75. Plaintiffs hereby incorporate the allegations of Paragraphs 1 through 74 of their Complaint as if fully set forth herein at length.

76. Even assuming a reconciliation process begun by the House Budget Committee of the House of Representatives constitutes the initiation of the Senate Bill and its revenue raising measures in the House as required by the Origination Clause, such an initiation would require the House to avoid voting on the Senate Bill.

77. On information and belief, the House Rules Committee, under the chairmanship of Louise Slaughter (D NY) is in the process of crafting a rule that will "deem" the Senate Bill to have passed, even though it will not be voted on directly by the members of the House, which rule is known as "Deem and Pass" or the "Slaughter Rule."

78. Passage of the Senate Bill by the House without the members of the House voting directly on the Senate Bill would violate Article I, Section 7 of the Constitution, which requires that before a bill can "become a law," the House and Senate must vote on the exact same bill that contains the exact same text.

79. Voting on a companion reconciliation bill, containing a package of amendments to the Senate Bill, which is then deemed by a House rule to constitute passage of the Senate Bill itself, is not a vote on the exact same bill and the exact same text as the bill that the Senate voted on, and would violate the requirements of Article I, Section 7 of the Constitution for when a bill can "become a law."

WHEREFORE, Plaintiffs pray for the entry of judgment against the Defendants

(A.) Declaring that passage of the Senate Bill by the House of Representatives without the members of the House voting directly on the Senate Bill violates Article I, Section 7 of the United States Constitution;

(B.) Declaring the Senate Bill, if passed by the House of Representatives pursuant to the "Deem and Pass" or "Slaughter Rule" so that the members of the House do not vote directly on the Senate Bill, is null and void as passed in violation of the requirements prescribed by Article I, Section 7;

(C.) Enjoining the President from signing the Senate Bill upon it being passed by the House of Representatives pursuant to "Deem and Pass" or the "Slaughter Rule" and presented to President for his signature;

(D.) Enjoining the enforcement and implementation of any resulting health care reform bill that is presented by Congress to the President and is signed by the President; and

(E.) For such additional and further relief as may be just or equitable.

R. Martin Palmer

Date Filed: March 18, 2010

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

DANIEL G. ANDERSON, et al.,

Plaintiffs

v.

BARACK OBAMA,

Defendant

PJM 10-CV-0017

SUPPLEMENTAL AFFIDAVIT

STATE OF MARYLAND, COUNTY OF WASHINGTON, to-wit:

COMES NOW, RICHARD P DELANEY, M.D , and makes affidavit as follows.

We are more privileged, more blessed a state than we can know. Should we allow the culture of socialism to have its sway, we will have handed over a way of life based on true freedom — freedom of soul, mind and heart. Handed it over for what? Chains! This is neither hyperbole nor dramatization for effect. If we permit a centralized government to control a patient's freedom to choose his physician and to control the physician's freedom to choose the most beneficial treatment for that patient, another onerous link will have been forged. What then might not be mandated by the state? The government's lawyers claim that I have no "standing." In this single manifestation of the destruction of that traditional deep bond (the doctor/patient relationship) existing between me and my sick patient, I see freedom being stolen from us; the

trust that my patient places in my hands violated by bureaucracy. That bureaucracy takes no responsibility for the outcome and has no compassion for the pain and worry that illness brings. I am forced to **practice my art deficiently** but am told that I have no **standing** to say so. There are examples of many such invasions into the interplay between the sick, anxious patient and the concerned, compassionate physician apparent throughout this medical care catastrophe dubbed "Heath Care Reform."

To say that I have no standing calls to mind a tragic cartoon. The doctor is tied hand and foot to the railroad track while the juggernaut train bears down on him at ram speed. Yet the doctor may not petition the engineer to stop. After all, tied down as he is, he has no standing. Who are they who render this negative judgment on "standing?" What have they studied of anatomy, physiology, morgamc and organic chemistry, biochemistry, pathology, pharmacology, psychology, psychiatry and all other subjects which form merely the pre-education of the aspiring doctor? The physician's clinical education, by far the most taxing, is yet to come. The clinical training, in fact, never ends. It has been well said (Sir William Osler) that medicine is learned at the patient's bedside. It is a truth that no doctor, however long his practice, however eminent his station, can ever afford to neglect. It is a truth that certainly will be forgotten should the President and Congress force their brand of medicine on the rest of us. "Standing" refers to personal impact by or involvement in some particular affair. My profession, my vocation, my business, my very identity is deeply involved in and defined by the practice of medicine. It will be permanently disrupted by any of the various medical plans concocted behind closed doors and supported through bribery and blackmail. I have attached some of these invasions as an addendum to this statement. Please

review the cases cited in the addendum. They are a sample of but a few of the instances in which the government is trying to capture the practice of medicine to aggrandize power to itself. It is not true to say that I have no standing in opposing this. That train is heading my way.

/s/_____

Richard P. Delaney, M.D.

State of Maryland

County of Washington

Subscribed and sworn to before me this 17th day of March, 2010, at Hagerstown, Maryland.

/s/Melanie L. Port

Notary Public

My Commission Expires:

04/21/2012

HEALTH CARE BILL

There follows a summary of some of the provisions found in just the first 498 pages of the health care bill. This summary was put together by Dr. Stephen Fraser of Indianapolis, Indiana, an anesthesiologist, and sent to Richard P. Delaney, M.D., one of the Plaintiffs in *Anderson, et al. vs. Obama*, U.S. District Court for the District of Maryland, Greenbelt Division, Case No. 10-CV-0017.

Dr. Delaney is taking Dr. Fraser's word for the summary of the provisions and has added (in parenthesis in italics) his comments of how this health care bill will affect his medical patients and his practice:

Beginning at Page 22:

Page 22 mandates that the government will audit books of all employers that self-insure!!

Page 30, Section 123: THERE WILL BE A GOVERNMENT COMMITTEE that decides treatment/benefits you get. ***(Directly interferes.)***

Page 29, lines 4-16: YOUR HEALTH CARE IS RATIONED!! ***(Rations health care — directly affects me and my patients.)***

Page 42 The Health Choices Commissioner will choose your HC benefits for you. You have no choice! ***(Direct interference.)***

Page 50, Section 152: Health care will be provided to ALL non-US citizens, illegal or otherwise.

Page 58: Government will have real-time access to individual's finances and a National ID Health card will be issued (Papers please!) ***(Strong effect on all medical practices.)***

Page 59, lines 21-24: Government will have direct access to your bank accounts for elective funds transfer. (Time for more cash and carry!)

Page 65, Section 164 is a pay off subsidized plan for retirees and their families in unions and community organizations (ACORN)

Page 84, Section 203: Government mandates ALL benefit packages for private health care plans in the "Exchange." ***(Direct interference.)***

Page 85, line 7: Specifications of benefits levels for plans — the government will ration your health care! ***(Direct interference.)***

Page 91, lines 4-7: Government mandates linguistic appropriate services.

Page 95, lines 8-16 HC Bill: The government will use groups (i.e. ACORN and Americorps) to sign up individuals for government HC plan.

Page 85, line 7: Specifications of benefits levels for plans (AARP members, your health care WILL be rationed.) ***(Direct interference.)***

Page 102, lines 12-18. Medicaid eligible individuals will be automatically enrolled in Medicaid (no choice) ***(Affects all medical practices.)***

Page 124, lines 24-25: No company can sue government on price fixing. No "judicial review" against government monopoly.

Page 12, lines 1-16 Doctors/American Medical Association, the government will tell YOU what salary you can make. ***(This is to me a form of slavery.)***

Page 145, line 15-17: An employer MUST auto-enroll employees into public option plan (no choice)

Page 126, lines 22-25: Employers MUST pay for health care for part-time employees AND their families (Employees shouldn't get excited about this as employers will be forced to reduce its workforce, benefits, and wages/salaries to cover such a huge expense.)

Page 149, lines 16-24: ANY employer with payroll $401k and above who does not provide public option will pay 8% tax on all payroll. (See the last comment in parentheses.)

Page 150, lines 9-13: A business with payroll between $251k and $401k who doesn't provide public option will pay 2-6% tax on all payroll.

Page 167, lines 18-23: ANY individual who doesn't have acceptable health care according to government will be taxed 2.5% of income.

Page 170, lines 103: Any NON-RESIDENT alien is exempt from individual taxes. (Americans will pay.) (Like always.) ***(This will have the affect of overloading office schedules and hurt everybody.)***

Page 195: Officers and employees of the GOVERNMENT health care administration will have access to ALL Americans' finances and personal records. (I guess so they can 'deduct' their fees.) ***(This ruins patient confidentiality.)***

Page 203, lines 14-15: "The tax imposed under this section shall not be treated as tax." (Yes, it really says that!) (a fee instead)

Page 239, line 14-24: Government will reduce physician services for Medicaid seniors. (Low income and poor are affected.) ***(Directly interferes.)***

Page 241, lines 6-8: Doctors, it doesn't matter what specialty you have trained yourself in, you will all be paid the same. (Just TRY to tell me that's not Socialism!) ***(More slavery.)***

Page 253, lines 10-18: The government sets the value of a doctor's time, profession, judgment, etc. (Literally, the value of humans.) ***(Direct interference.)***

Page 265, Section 1131: The government mandates and controls productivity for "private" health care industries. ***(More slavery.)***

Page 268, Section 1141: The federal government regulates the rental and purchase of power-driven wheelchairs. ***(Direct interference; my hemiplegic patient cannot get a wheelchair, etc.)***

Page 272, Section 1145. TREATMENT OF CERTAIN CANCERS - Cancer patients, welcome to rationing! ***(Direct interference.)***

Page 280, Section 1151: The government will penalize hospitals for whatever the government deems preventable (i.e. readmissions). ***(Direct interference and threats.)***

Page 298, lines 9-11. Doctors. If you treat a patient during initial admission that results in a readmission, the government will penalize you! ***(Direct interference and threats.)***

Page 317, lines 13-20: PROHIBITION on ownership/investment. (The government tells doctors what and how much they can own!) ***(Direct interference and more slavery.)***

Page 317-318, lines 21-25, 1-3: PROHIBITION on expansion. (The government is mandating that hospitals cannot expand.) ***(Direct interference.)***

Page 321, lines 2-13: Hospitals have the opportunity to apply for exception BUT community input is required. (Can you say ACORN?) ***(Direct interference.)***

Page 335, lines 16-25, pages 336-339. The government mandates establishment of two outcome-based measures. (Health care the way they want — rationing.) ***(Direct interference.)***

Page 341, lines 3-9: The government has authority to disqualify Medicare Advance Plans, HMO's, etc. (forcing people into the government plan). ***(May force current patients out of my office.)***

Page 354, Section 1177: The government will RESTRICT enrollment of 'special needs' people! Unbelievable! ***(Truly unbelievable interference; some of these wonderful people are my patients.)***

Page 379, Section 1191: The government creates more bureaucracy via a "Tele-Health Advisory Committee." (Can you say health care by phone?) ***(Scary and interferes.)***

Page 425, lines 4-12: The government mandates "Advance-Care Planning Consult. (Think senior citizen end-of-life patients.) ***(Scary and interferes.)***

Page 425, lines 17-19: The government will instruct you and consult regarding living wills, durable powers of attorney, etc. (And it's mandatory!) ***(Scary and interferes in a big way.)***

Page 425, lines 22-25, 426, lines 1-3: The government provides an "approved" list of end-of-life resources guiding you in death. (Also called 'assisted suicide.') (Sounds like Soylent Green to me.) ***(Scary and interferes in a big way.)***

Page 427, lines 15-24: The government mandates a program for orders on "end of life." (The government has a say in how your life ends!) ***(Scary and interferes in a big way.)***

Page 429, lines 10-12: An "advanced care consultation" may include an ORDER for end-of-life plans . . . (AN ORDER TO DIE FROM THE GOVERNMENT?!) ***(Scary and interferes in a big way.)***

Page 429, lines 13-25: The government will specify which doctors can write an end-of-life order. (I wouldn't want to stand before God after getting paid for THAT job!) ***(Scary and interferes in a big way.)***

Page 430, lines 11-15: The government will decide what level of treatment you will have at end of life! (Again, no choice!) ***(Scary and interferes in a big way.)***

Page 469: Community-Based Home Medical Services - Non-Profit Organizations (Hello? ACORN Medical Services here!?!)

Page 489, Section 1308: The government will cover marriage and family therapy. (Which means government will insert itself into your marriage even.) ***(Scary and interferes in a big way.)***

Page 494-498: Government will cover mental health services including defining, creating and rationing those services ***(Scary and interferes in a big way.)***

Exhibit B

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

DANIEL G. ANDERSON, et al.,	)	
	)	
	)	
Plaintiffs	)	
	)	Case No. 8:10-CV-0017
v.	)	
	)	
BARACK OBAMA,	)	
	)	
Defendant	)	

AFFIDAVIT

DISTRICT OF COLUMBIA:SS

COMES NOW, RONALD USCINKSI, M.D., and makes affidavit as follows:

I am a clinical neurosurgeon involved in the day-to-day practice of my craft. There is no question that the Obama health care legislation will impact negatively on my clinical practice and the practice of just about every physician I know, our patients' health, and quite possibly their lives. With the advent of non-physicians interfacing between medical decision making and patients affected by such decisions, the introduction of a third party has already resulted in a form of economic rationing for my patients. Certain health plans will not pay for certain procedures, drugs, or treatments and have reduced the amount of time they will reimburse for postoperative hos-

pitalization, and from here on the front lines, patients are put at some risk with too-early hospital discharges. I see this often. So patients therefore even today, with our current system, have limits on their choices.

The imposition of an even larger bureaucracy, by simple common sense, is not streamlining. Today it is still possible for me to obtain appropriate neurodiagnostic procedures such as CT or MRI scanning with minimal delay. With the imposition of additional layers of personnel who are to be involved with such decision making, I do not see anything but further delay, unnecessary effort, paperwork, and reduced efficiency, and ultimately, paralysis. Quite simply, people are going to become more ill and even die while waiting for treatment, as has happened in every country that has adopted such a system. Although such delay is little seen at present in our system, the seeds are there, and I do not see this legislation speeding up the process. As we know already, costs continue to rise for the patient and reimbursement continues to decline for the doctor. The money is not going to the provider of service, but to the burgeoning intermediaries between the doctor and the patient. Would you designate more intermediaries? You will reduce overall unemployment perhaps, but only at the expense of medical productivity and perhaps patients' health. There was no unemployment in the former Soviet Union, but little actual work got done, and they were unable to compete with us.

As far as I and my colleagues' ability to continue under such a system, basically it's a simple question of common sense. If reimbursement for services provided is reduced yet the cost of running a practice increases through such factors as general office overhead, liability insurance, and even filling my car with gasoline to make hospital rounds, not to mention personal expenses such as groceries, household utilities including energy, and, of

course, tax increases, one is led inevitably to a point at which a physician such as myself simply cannot work hard enough and care for enough patients to keep my practice in the black. There are not enough hours in the day, and as a conscientious practitioner of medicine, one cannot cut corners. After watching my own career, not one of my children has even considered a career in medicine. You will drive away the very practitioners who have made health care in the United States the eminent system it has become and replace medical practice with medical processing. I would predict our more capable citizens will seek medical care elsewhere, as other socialized systems have indeed sought care here, before the advent of this prospective program.

/s/_____

Ronald Uscinksi, M.D.

DISTRICT OF COLUMBIA:SS

Subscribed and sworn to before me this 15th day of March, 2010, at District of Columbia.

/s/_Hazel A. Waters_____

Notary Public

My Commission Expires:

01/14/2010

Exhibit C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

DANIEL G. ANDERSON, et al.	)	
	)	
	)	
Plaintiffs	)	
	)	Case No. 8:10-CV-0017
v.	)	
	)	
BARACK OBAMA,	)	
	)	
Defendant	)	

AFFIDAVIT

STATE OF MARYLAND, COUNTY OF WASHINGTON, to-wit:

COMES NOW, JENNIFER R. BOYER, and makes affidavit as follows:

I am 24 years old. I have spent countless hours in high school and college preparing myself for the challenge of medical school and a career as a physician. I wanted to become a doctor so I could counsel and treat patients on a professional level, with the hope that every once in a while I could change, improve and even save people's lives.

I received an offer of admittance to medical school in the spring of 2009. I deferred my acceptance and have spent almost a year analyzing the cost of my dream against the benefit. The average medical school student will acquire nearly $200,000 in debt over four years of rigorous coursework. Additionally, medical students

willingly trade four years of their young lives for the vast knowledge required to effectively treat patients.

Until this past year, I would have gladly taken on the debt and the workload necessary to fulfill my dream because the relationships that doctors develop with their patients over an entire career are invaluable. But—Obama's health care plan will make doctors nothing more than a name on a list of providers. The level of care doctors are able to provide will be limited to the allowed services on government-funded health insurance plans.

At this point, I ask myself, "Why should I take on the debt, make the personal sacrifices, and spend the time to become a physician? I will most likely end up as a subordinate, catering to someone else's ideas." Honestly, in this political climate, I think it makes more sense to become a Physician's Assistant. I could still see patients and impact lives, but I can reach that point in less than half the time with less than half the debt and only a fraction of the headaches.

Obama's decision to tackle health care reform so quickly and with so little thought to the future of America's doctors is taking away many of the incentives that drive bright, young students to pursue a career in medicine. Such a decision should not be made lightly because it could have a drastic impact on the future of medicine.

/s/_____

Jennifer R. Boyer

STATE OF MARYLAND; COUNTY OF WASHINGTON

Subscribed and sworn to before me this 17th day of March, 2010, at Hagerstown, Maryland.

/s/_____

Notary Public

My Commission Expires:

4/21/12

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

DANIEL G. ANDERSON; WILLIAM COLLITON, M.D., RICHARD P. DELANEY, M.D., GAETANO MOLINARI, M.D.; RICHARD LORIA, M.D.; LORENZO MARCOLIN, M.D.; JAMES RONAN, M.D., EDWARD SHERIDAN, M.D.; EDWARD SOMA, M.D.; and RONALD UCINSKI, M.D.,

Plaintiffs,

v.

BARACK HUSSEIN OBAMA, in his official capacity as President of the United States,

Defendant.

C.A. No. 8:10-CV-00017-PJM

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

INTRODUCTION

Plaintiffs by and through their counsel, R. Martin Palmer, hereby submit their Memorandum of Law in Support of the Plaintiffs' Motion for Leave to File their Second Amended Complaint.

STANDARD OF REVIEW

Leave to amend a complaint should be freely granted "when justice so requires." Fed. R. Civ P. 15(a)(2). While the Court is given the discretion to deny the motion to amend, "that discretion is limited by the interpretation given Rule 15(a) in *Foman [v. Davis,* 371 U.S. 178 (1962)], 'and by the general policy embodied in the Federal Rules favoring resolution of cases on their merits.'" *Island Creek Coal Co. v. Lake Shore, Inc.*, 832 F.2d 274, 279 (4th Cir. 1987) (citation omitted). Upholding the letter and the spirit of this rule, "leave to amend a pleading should be denied only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would be futile." *Edwards v. City of Goldsboro,* 178 F.3d 231, 242 (4th Cir. 1999), quoting *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 509 (4th Cir. 1986) (emphasis in original). A delay in bringing a proposed amendment is insufficient reason to deny leave to amend. *Edwards v. Goldsboro,* 178 F.3d at 242

For a motion to amend to be denied for futility, the amendment must be "clearly insufficient or frivolous on its face." *Johnson v. Oroweat Foods Co.*, 785 F.2d at 510-511.

I. The Amendment Will Not Be Prejudicial To Defendant, and There Has Been No Bad Faith on the Part of the Moving Party.

There is no basis for an argument that the amendment will be prejudicial to the Defendant. While the proposed Second Amended Complaint adds new constitutional claims to this action, the addition of new theories of recovery is insufficient reason to disallow amendment. *Robinson v. GEO Licensing, L.L.C.*, 173 F. Supp. 2d 419, 426 (D. Md. 2001); *Fed. Leasing v. Amperif Corp.*, 840 F. Supp. 1068, 1072 (D. Md. 1993). While "[i]t is

true that prejudice can result where a proposed amendment raises a new legal theory . . . that basis for a finding of prejudice essentially applies where the amendment is offered shortly before or during trial." *Johnson v Oroweat Foods Co.*, 785 F.2d at 510.

In the context of a motion for leave to amend, "[p]rejudice means that the non-moving party 'must show that it was unfairly disadvantaged or deprived of the opportunity to present facts or evidence which it would have offered had the . . . amendments been timely.'" *Cuffy v Getty Ref. & Mktg. Co* , 648 F. Supp 802, 806 (D Del. 1986) (citation omitted); accord, *Robinson v GEO Licensing, L.L.C.*, 173 F. Supp 2d at 426. As this case is in the preliminary motion stage and discovery has not yet even commenced, Defendant cannot show any such unfair disadvantage or deprivation of opportunity.

Nor is there any support for an argument that the moving parties are guilty of bad faith. The amendments in question are made entirely in good faith on the basis of rapidly moving events, including the recent and ongoing actions of the leadership of the House of Representatives in seeking to secure passage of the Senate Bill through the House of Representatives, all of which have occurred since the filing of the original and First Amended Complaints

In short, leave to amend cannot be denied on the basis of either prejudice to the Defendant or bad faith on the part of the moving parties.

II. The New Constitutional Claims Set Forth in the Proposed Amendment Are Not Futile.

The proposed amendment is neither clearly insufficient nor frivolous on its face The proposed Second Amended Complaint sets forth two additional consti-

tutional claims involving the same Senate Bill that is the subject of the original constitutional claims asserted against the Defendant President.

The claim set forth in Count III of the proposed Second Amended Complaint is based on the Origination Clause. The Origination Clause mandates that "[a]ll bills for raising Revenue shall originate in the House of Representatives." US Const., Art I, § 7, cl. 1; see *United States v. Munoz-Flores*, 495 U.S. 385, 387 (1990). As the Supreme Court elaborated in *Munoz-Flores*,

> In the case of "Bills for raising Revenue," § 7 requires that they originate in the House before they can be properly passed by the two Houses and presented to the President. The Origination Clause is no less a requirement than the rest of [Section 7] because 'it does not specify what consequences follow from an improper origination,' post, at 402. None of the Constitution's commands explicitly sets out a remedy for its violation. Nevertheless, the principle that the courts will strike down a law when Congress has passed it in violation of such a command has been well settled for almost two centuries. *See, e.g.*, *Marbury v. Madison*, 1 Cranch 137, 176-180 (1803) That principle applies whether or not the constitutional provision expressly describes the effects that follow from its violation

495 U.S. at 396-397.

The bill in question, moreover, is one for "raising Revenue." Thus, the Senate Bill raises revenue through the imposition of taxes, fees, and limits on deductions, including, but not limited to, a tax on cosmetic surgery, higher payroll taxes on top earners, a tax on high end, "luxury" health insurance plans, the imposition of fees on health insurance companies, the imposition of fees on drug manufacturers, the imposition of fees on the manufacturers of medical devices, the setting of a higher floor for deducting medical expenses, and the imposition of a cap on flexible health spending accounts. Furthermore, the health care subsidies and programs financed by these taxes will benefit groups of citizens who are "entirely unrelated to the persons paying for the program[s]." *See United States v. Munoz-Florez*, 495 U.S. at 400 n. 7 (not reaching question "[w]hether a bill would be 'for raising Revenue' where the connection between payor and program was more attenuated . . .")

Secondly, the bill in question, The Patient Protection and Affordable Care Act (H.R. 3590), hereinafter "the Senate Bill," is a Senate health care reform bill that was initiated in the Senate by being introduced on the floor of the Senate on November 18, 2009. Consequently, passage of this revenue-raising bill by the House of Representatives fails to meet the requirements of the Origination Clause and would render any resulting law subject to being struck down as null and void.

The claim set forth in Count IV of the proposed Second Amended Complaint is based on the requirement of Article I, Section 7 of the Constitution that, in order for a bill to "become a law," the exact same bill with the exact same text must be approved by both the House and the Senate before the that text is presented to the President to be signed. *See* U.S. Const. Art. I, § 7; *Clinton v. City of New York*, 524 U.S. 417, 448 (1998). Voting on a companion reconciliation or sidecar bill, containing a package of

amendments to the Senate Bill, which vote is then "deemed" by a House rule to constitute passage of the Senate Bill itself, is not a vote on the exact same bill and the exact same text as the bill that the Senate voted on, and would violate the requirements of Article I, Section 7 of the Constitution for when a bill can "become a law"

In short, the new claims asserted in the proposed amendment are neither clearly insufficient nor frivolous. Thus, leave to amend should not be denied on the grounds of futility, and the substantive merits of the proposed additional claims should be left for later resolution, e.g., under motions to dismiss or for summary judgment or at trial. *See Rambus v. Infineon Techs. AG*, 304 F. Supp. 2d 812, 819 (E.D. Va. 2004).

CONCLUSION

In view of the arguments made and authorities cited above, Plaintiffs respectfully request that their Motion for Leave to File Second Amended Complaint be granted.

Respectfully submitted,

_____

R. Martin Palmer

Date Filed: March 18, 2010

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

DANIEL G. ANDERSON; WILLIAM COLLITON, M.D.; RICHARD P. DELANEY, M.D.; GAETANO MOLINARI, M.D.; RICHARD LORIA, M.D.; LORENZO MARCOLIN, M.D.; JAMES RONAN, M.D ; EDWARD SHERIDAN, M.D.; EDWARD SOMA, M.D., and RONALD UCINSKI, M.D.,
Plaintiffs,
v.
BARACK HUSSEIN OBAMA, in his official capacity as President of the United States,
Defendant.

Civil Action No. 10-17
Judge Messitte

DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

1. On March 18, 2010, the Court dismissed Plaintiffs' First Amended Complaint with prejudice as to President Barack Obama On the same day, Plaintiffs moved for leave to amend their Complaint, seeking to add three defendants, all Members of Congress. Plaintiffs also seek to add one additional plaintiff, and three new affidavits addressing Plaintiffs' alleged injuries. Finally, Plaintiffs seek to add two new claims, that the Congressional procedure known as "deem and pass" violates the Bicameralism and Presentment Clause, and that the Patient Protection and Affordable Care Act violates the Origination Clause The Court should deny Plaintiffs' motion for leave to amend their Complaint as to the

President, because all of these amendments would be futile as to Plaintiffs' claims against the President.

2. A "court should freely give leave" for plaintiffs to amend a complaint "when justice so requires." Fed. R. Civ. P. 15(a) However, a court should deny leave to amend when the "amendment would be futile." *Edwards v City of Goldsboro,* 178 F.3d 231, 242 (4th Cir. 1999). A proposed amendment is futile if it is "clearly insufficient or frivolous on its face." *Johnson v. Oroweat Foods Co* , 785 F2d 503, 510 (4th Cir. 1986).

3. The Court granted Defendant's Motion to Dismiss with prejudice as to President Obama, holding that Plaintiffs had alleged no legally cognizable injury, and that their claims against the President were neither redressable nor justiciable. Order Granting Motion to Dismiss, Docket No. 45. The additional claims that Plaintiffs seek to add, that the Congressional procedure known as "deem and pass" violates the Bicameralism and Presentment Clause, and that the Patient Protection and Affordable Care Act violates the Origination Clause, are not claims against the President, but rather against the Members of Congress whom Plaintiffs seek to add as defendants [1] Plaintiffs' proposed amendments are clearly futile as to their claims against the President; adding an additional plaintiff and additional assertions of injury does nothing to make

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1 While the undersigned counsel do not represent the Members of Congress in this matter, we note for the Court that it seems likely that Plaintiffs' proposed amendment to add these Members of Congress as defendants would be futile because it appears that they would be absolutely immune from suit U S Const Art I, § 6 ("[F]or any Speech or Debate in either House, [Members of Congress] shall not be questioned in any other Place "), Kilbourn v Thompson, 103 U S 168, 204 (1880) (Members of Congress are absolutely immune from suit for any actions "generally done in a session of the House by one of its members in relation to the business before it," including "the act of voting ")

Plaintiffs' claims against the President redressable or justiciable. For the foregoing reasons, Plaintiffs' motion for leave to file a second amended complaint should be DENIED as to their claims against the President.

Dated: April 2, 2010

Respectfully submitted,
TONY WEST
Assistant Attorney General
ROD J. ROSENSTEIN
United States Attorney
/s/ Erika Myers
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UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

DANIEL G. ANDERSON; WILLIAM COLLITON, M.D.; RICHARD P. DELANEY, M.D.; GAETANO MOLINARI, M.D.; RICHARD LORIA, M.D ; LORENZO MARCOLIN, M D.; JAMES RONAN, M.D.; EDWARD SHERIDAN, M.D.; EDWARD SOMA, M.D.; and RONALD UCINSKI, M.D.,

Plaintiffs,

v.

BARACK HUSSEIN OBAMA, in his official capacity as President of the United States,

Defendant.

C A. No 8 10-CV-00017-PJM

MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

Plaintiffs hereby move pursuant to Fed. R Civ. P. 15(a) for leave to file the attached proposed Second Amended Complaint. The Motion is supported by the attached Memorandum of Law. Counsel for Defendant has been contacted and has indicated that they will oppose the Motion

R Martin Palmer

Date Filed March 18, 2010

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

DANIEL G ANDERSON; WILLIAM COLLITON, M.D.; RICHARD P. DELANEY, M D ; GAETANO MOLINARI, M.D.; RICHARD LORIA, M.D ; LORENZO MARCOLIN, M.D.; JAMES RONAN, M.D.; EDWARD SHERIDAN, M.D.; EDWARD SOMA, M.D., and RONALD UCINSKI, M.D.,

Plaintiffs,

v.

BARACK HUSSEIN OBAMA, in his official capacity as President of the United States,

Defendant.

C.A. No. 8:10-CV-00017-PJM

PLAINTIFFS' MOTION FOR RECONSIDERATION OF ORDER DISMISSING FIRST AMENDED COMPLAINT

Plaintiffs, by and through undersigned counsel, hereby move pursuant to Fed. R. Civ. P. 59(e) for reconsideration of the Court's Order of March 19, 2010 dismissing the Plaintiffs' First Amended Complaint with prejudice.

Standard Governing Motion for Reconsideration

The Federal Rules of Civil Procedure do not mention a "motion for reconsideration." Even so a 'motion for reconsideration' is treated as a motion to alter or

amend judgment under Rule 59(e) if it is filed within 28 days of entry of judgment Fed. R. Civ P 59(e). "Motions for reconsideration serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence" *Publisher's Resource, Inc. v. Walker-Davis Publications, Inc.*, 762 F.2d 557, 561 (7th Cir. 1985); *accord Harsco Corp v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985), *cert. denied*, 476 U.S. 1171 (1986). As to the first ground's "manifest error" justification, a motion for reconsideration will be granted only where the court has overlooked matters or controlling decisions that might have materially influenced the earlier decision. *Quarles v. Smith (In re Quarles),* 1997 U.S. Dist LEXIS 13992, *9 (W.D Va Aug. 25, 1997), *aff'd*, 165 F.3d 19 (4th Cir. 1998), quoting *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. New York State Dep't of Environmental Conservation*, 831 F. Supp 57, 60 (N.D.N Y. 1993), *aff'd in part, rev'd on other grounds,* 17 F 3d 521 (2d. Cir 1994) (quoting in turn *Park South Tenants Corp. v 200 Central Park South Associates, L P* , 754 F Supp. 352, 354 (S.D N.Y), *aff'd*, 941 F.2d 112 (2d Cir. 1991)) A motion for reconsideration is therefore appropriate where the Court has overlooked an argument the consideration of which could have changed the result that the Court reached. *See, e g., Royal Ins. Co. of America v. Miles & Stockbridge P C.*, 142 F. Supp. 2d 676, 677 n. 1 (D Md 2001) (granting motion for reconsideration to consider overlooked argument and entering summary judgment on basis of that argument in favor of movant).

ARGUMENT

I. The Court Overlooked Controlling Decisions Regarding Redressability.

The Court accurately summarized the core allegations of the Complaint by stating that, "according to plaintiffs, during . . . closed-door sessions, the President

and/or members of his staff threatened to put Offnutt Air Force base in Nebraska on the list for base closures unless Senator Nelson were to vote in favor of health care legislation." (Trans., March 18, 2010, p. 37, lines 3-7.) Concerning the redressability of the Plaintiffs' claims based on these factual allegations demonstrating the President's violation of separation of powers and his undertaking of ultra vires actions, the Court framed the issue as "whether the President himself can be enjoined . . . from the kind of action that he is alleged to have taken here." (Trans., March 18, 2010, p. 52, lines 18-20.)

In deciding this question in the negative, the Court acknowledged the Plaintiffs' suggestion that "they would offer, [to] add [as party defendants] other White House staff arguing that they could proceed against other White House staff, such as Rahm Emanuel." (Trans., March 18, 2010, p. 52, lines 22-24.) The Court nonetheless concluded, "That doesn't cure the redressability problem," saying:

> They [, i.e., the Plaintiffs,] still ultimately would have to enjoin the President himself, and *the Court doesn't find any authority for doing that.* The Court does find that it would involve an unconstitutional invasion of the rights of the Executive here.

(Trans., March 18, 2010, p. 52, line 25, p. 53, lines 1-4 (emphasis added.))

The Court thereby overlooked controlling decisions cited and discussed by the Plaintiffs in their opposition to the Defendant's motion to dismiss. First and foremost, the Court failed to consider the impact of the Supreme Court's seminal decision in *Youngstown Sheet & Tube Co.*

v. Sawyer, 343 U.S. 579 (1952) on the redressability issue.[1] In that case, the Supreme Court upheld the issuance of an injunction against the Secretary of Commerce, enjoining him from carrying out an executive order signed by President Truman directing the seizure of the nation's steel mills, on the grounds that the issuance of the executive order exceeded the President's powers under the Constitution and constituted a violation of the separation of powers principle. *Youngstown Sheet & Tube* clearly establishes the principle that the President and other high officials in the Executive Branch can be enjoined from undertaking or pursuing actions, regardless of whether those actions are ministerial or discretionary in character, that unlawfully encroach upon the powers of the Legislative Branch. As the D.C. Circuit Court of Appeals later observed, "Justice Black, writing for the Youngstown majority, made it clear that the Court understood its affirmance *effectively to restrain the President*." *Nixon v. Sirica*, 487 F.2d 700, 709 (D.C. Cir 1973) (emphasis added). "There is not the slightest hint in any of the Youngstown opinions that the case would have been viewed differently if President Truman rather than Secretary Sawyer had been the named party." *Id.*

The Court also overlooked the following language in *Nixon v. Fitzgerald*, 457 U.S. 731, 754 (1982): "When judicial action is needed to serve broad public interests – as when the Court acts, not in derogation of the separation of powers, but to maintain their proper balance, cf. *Youngstown Sheet & Tube Co. v. Sawyer, supra*, the exercise of jurisdiction [over the President] has been held warranted." As this passage demonstrates, the grant of an injunction in this case, far from amounting to "an unconstitutional invasion of the rights of the Executive,"

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1 The Court did cite to Youngstown Sheet & Tube once, but only in connection with a discussion of the "nonjusticiable political question" issue. (Trans., March 18, 2010, p. 48, line 25.)

would prevent the encroachment by the President upon the constitutional legislative prerogatives of Congress and thereby "serve broad public interests" by maintaining the proper balance of powers between the Executive and Legislative Branches of the Government.

In short, there is "authority for doing that," i.e., for enjoining the President from usurping the power of the Legislative Branch, which the Court overlooked. The Court should therefore grant the motion for reconsideration and hold that the Plaintiffs' claims are fully redressable by the grant of injunctive relief against either the President himself or his White House staff.

II. The Court Overlooked Controlling Decisions Regarding Justiciability.

In holding that this case presented only nonjusticiable political issues, the Court stated that "what this case demonstrates, if anything, is the impossibility of the Court undertaking an independent resolution without expressing lack of [respect] due to a coordinate branch of government." (Trans. March 18, 2010, p. 53, lines 10-13.) The Court pointed to the fact that it "would need to conduct a detailed inquiry into closed-door meetings between the President and the Senator [, i.e., Senator Nelson (D-Neb)]," and "would have to make a detailed inquiry into the Senator's motivations" in voting for the Senate Bill." (Trans. March 18, 2010, p. 53, lines 14-15 & 20-24.) The Court concluded that these inquiries could not be undertaken "without seriously and inappropriately intruding into the legislative process" and thereby showing "a lack of respect for both the President and the Congress." (Trans. March 18, 2010, p. 53, lines 24-25, p. 54, lines 1-3.)

The Court thereby overlooked the controlling decision of the Supreme Court in *United States v. Munoz-Flores*, 495 U.S. 385 (1990). In that case, the Government

argued that the passage of a bill by the House of Representatives conclusively establishes compliance with the Origination Clause, and that "a court's invalidation of a law on Origination Clause grounds would evince a lack of respect for the House's determination [that the bill's passage complied with the Origination Clause]." 495 U.S. at 390 The Court rejected this argument that the question of compliance with the Origination Clause was a nonjusticiable political question, saying:

> [T]his Court has the duty to review the constitutionality of congressional enactments. As we have said in rejecting a claim identical to the one the Government makes here: "Our system of government requires that federal courts on occasion interpret the Constitution in a manner at variance with the construction given the document by another branch. The alleged conflict that such an adjudication may cause cannot justify the courts' avoiding their constitutional responsibility" *Powell v McCormack*, 395 U.S. 486, 549 (1969)

495 U.S. at 391

The Court in *Munoz-Flores* went on to reject the Government's further argument that judicial scrutiny of the Origination Clause issue would demonstrate a lack of respect for the House because "the House has the power to protect its institutional interests by refusing to pass a bill if it believes that the Origination Clause has been violated" *Id.* The Court responded by observing:

> *In many cases involving claimed separation-of-powers violations, the branch*

> *whose power has allegedly been appropriated has both the incentive to protect its prerogatives and institutional mechanisms to help it do so. Nevertheless, the Court adjudicates those separation-of-powers claims, often without suggesting that they might raise political questions.* . . . In short, the fact that one institution of Government has mechanisms available to guard against incursions into its power by other governmental institutions does not require that the Judiciary remove itself from the controversy by labeling the issue a political question.

Id. at 393 (emphasis added and citations omitted)

Thus, to the extent the Court considered that a judicial inquiry would demonstrate a lack of respect for the President and the Congress because the political branches are fully capable of regulating their relationship and defending their respective prerogatives so as to avoid separation-of-powers violations, the Supreme Court's holding in Munoz-Flores conclusively rejected this consideration as justifying the labeling of a controversy as a political question.

To the extent, on the other hand, that the Court considered a judicial inquiry as requiring an evaluation of the subjective motivations of both the President and the Senator, and that this subjective inquiry would "inappropriately intrude" into the legislative process, the Court fundamentally misapprehended the nature of the inquiry required to establish a violation of the separation of powers doctrine. Such a violation is established by objective proof that the President threatened to use his Executive powers to adversely affect the constituents of

the Senator by recommending the closure of an Air Force base in the Senator's state if the Senator failed or refused to vote for the Senate Bill, regardless of what "the President's intentions were in making those [threatening] remarks" (Trans. March 18, 2010, p 53, lines 17-18). It likewise makes no difference "what the Senator understood those remarks to mean" or what "the Senator's motivations" were in voting for the Senate Bill

The President's action in making this kind of threat against the Senator amounted to an unconstitutional abuse of his Executive powers to gain power over the Legislative Branch, an action that would, if unchecked, lead to the tyrannical concentration of powers in a single branch of government that the Founders so feared. "The declared purpose of the separating and dividing the powers of government was to '[diffuse] power to better to secure liberty.'" *Bowsher v Synar*, 478 U.S. 714, 721 (1986) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S at 635 (Jackson, J., concurring)). "Justice Jackson's words echo the famous warning of Montesquieu, quoted by James Madison in The Federalist No 47, that '"there can be no liberty where the legislative and executive powers are united in the same person, or body of magistrates" . . .'" *Id* (quoting The Federalist No. 47, p. 325 (J. Cooke ed., 1961)). Justice Brandeis likewise once wrote that "[t]he doctrine of separation of powers was adopted by the Convention of 1787, not to promote efficiency *but to preclude the exercise of arbitrary power* . . [and] to save the people from autocracy" *Myers v United States*, 272 U.S 52, 240, 293 (1926) (Brandeis, J., dissenting), see also *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S at 613 (Frankfurter, J., concurring), where Justice Frankfurter, in his concurring opinion, observed that "I know of no more impressive words on this subject than those of Mr Justice Brandeis" in *Myers*.

Given the grave danger to liberty of the Executive Branch swallowing the Legislative Branch[2] through the use of such unconstitutional threats, objective proof of such a threat must give rise to a conclusive presumption that a subsequent vote by the Senator in favor of the Senate Bill was tainted by this constitutional violation. Only such a bright-line, prophylactic rule will prevent the "blending of executive and legislative power" that leads to the exercise of tyranny *See Youngstown Sheet & Tube v. Sawyer*, 343 U.S. at 629, 633 (Douglas, J., concurring).

There is therefore no need for the Court to inquire into the subjective intentions or motives of either the President or the Senator in order to resolve the Plaintiffs' constitutional claims. Furthermore, a limited objective inquiry into whether or not, during the closed-door meetings in question, threats were made by the President, or by members of his White House staff, to the Senator that the President would recommend the closure of Offnutt Air Force Base if the Senator failed to vote for the Senate Bill, would not involve an inappropriate judicial intrusion into the legislative process, but rather an appropriate judicial inquiry into whether the President himself inappropriately intruded into and aggrandized

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2 In 1792, Thomas Jefferson related how he told President George Washington that concentration of both legislative and executive powers in the Executive Branch was dangerous

> "I said to [President Washington] that if the equilibrium of the three great bodies, Legislative, Executive and Judiciary, could be preserved, if the Legislature could be kept independent, I should never fear the result of such a government, but that *I could not but be uneasy when I saw that the Executive had swallowed up the Legislative branch*."
>
> Thomas Jefferson The Anas, 1792 ME 1 318 (emphasis added)

the legislative process in violation of the separation-of-powers principle. The judicial resolution of the Plaintiffs' separation-of-powers claim would therefore not result in a lack of respect for either of the coordinate political branches of government.

The Court further reasoned, in support of its conclusion that the Plaintiffs' claims presented nonjusticiable political questions, that "there are no judicially discoverable or manageable standards for resolving plaintiffs' claims." (Trans March 18, 2010, p 54, lines 4-5.) Again, the Court overlooked the seminal case of *Youngstown Sheet & Tube*: manageable standards for determining when a President improperly encroaches upon powers of the Legislative Branch are well summarized in the majority and concurring opinions of that case. These judicially discoverable and manageable standards are perfectly adaptable and adequate for distinguishing between the benign forms of coercion and pressure that all Presidents bring to bear on members of Congress, and the particularly pernicious abuse of Executive powers that was directed against the Nebraska Senator in this case by the Defendant.

The Court should therefore grant the motion for reconsideration and rule that the Plaintiffs' claims do not involve nonjusticiable political questions.

III. The Court Overlooked Arguments Supporting The Doctors' Standing.

In holding that the Plaintiffs lack Article III standing, the Court initially ruled that, because the plaintiff doctors have no constitutional right to "freely practice medicine to the highest medical standards without arbitrary outside restraints" or "in a safe and effective manner," they have no standing to raise a separation-of-powers challenge to the Obamacare legislation (See Trans March 18, 2010, p. 50, lines 14-25.) The Court

also cited *Whalen v. Roe*, 429 U.S. 589, 604 n. 33 (1977), for the proposition that physicians have no constitutional right to be free from restrictions on the medical profession that make the physicians' work more laborious or less independent. (Trans. March 18, 2010, p. 51, lines 1-12.) The test for standing, however, does not require the doctors to demonstrate the infringement of an individual constitutional right. Rather, Plaintiffs need only "have suffered an 'injury in fact' – an invasion of a legally-protected interest which is (a) concrete and particularized . and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-561 (1992).

The Court overlooked two such legally-protected interests that will be invaded by the implementation of the Obamacare legislation. First, because the legislation, once it is fully implemented, will prevent Plaintiffs from practicing medicine in a safe and effective manner, i.e., it will force them to practice medicine "deficiently," by requiring them to subject their patients to increased medical risk (by, for example, subjecting their patients to long waiting periods for treatment and care, and by strictly regulating and restricting the kinds of treatments and remedies that a doctor may administer and prescribe to his or her patients), Plaintiff physicians "have a strong personal stake in the argument." *See Carhart v. Stenberg,* 972 F. Supp 507, 520-521 (D. Neb. 1997). Secondly, Plaintiffs also have a legally-protected interest in preserving the patient-physician relationship between Plaintiffs and their patients, which has been described as "a unique fiduciary-like relationship that exists between doctor and patient." *See Carhart v Stenberg*, 973 F. Supp. at 521, *see also Planned Parenthood of Southern Arizona, Inc. v Woods,* 982 F. Supp. 1369, 1376 (D. Ariz. 1997). This relationship will be irreparably harmed by implementation of the Obamacare legislation, which will

transform the patient-physician relationship into a much more impersonal, arms-length one that ill serves both the patient and doctor.

To the extent that the Court ruled that "there is no specificity about how [the doctors] are forced to practice medicine deficiently" or "how their practices will be affected by an impersonal system of medicine" (Trans. March 18, 2010, p. 51, lines 17-20, the Court should grant leave to amend to allow the Plaintiffs to make the requisite specific allegations The "court should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2).

To the extent that the Court ruled that "argu[ing] that harm is imminent given that the defendant is actively seeking legislation, passage of legislation, does not suffice" (Trans March 18, 2010, p. 52, lines 3-5), the legislation has since been enacted, with imminent consequences for the Plaintiffs To the extent that the Court ruled that "[m]any provisions may not take effect until some years down the road" and "may or may not affect plaintiffs at all or not in the ways that they now anticipate" (Trans. March 18, 2010, p. 52, lines 8-11), leave to amend should again be granted to allow Plaintiffs to allege exactly when those provisions of the now recently enacted law that affect them will go (or have already gone) into effect and how their practices will be (or already are being) adversely affected by those provisions.

In sum, the Court should grant the motion for reconsideration and either rule that the Plaintiffs have standing, or in the interest of justice grant Plaintiffs leave to amend to allow them to set forth adequate allegations supporting standing to raise their constitutional challenges to the Obamacare legislation

Conclusion

In view of the arguments made and authorities cited above, Plaintiffs respectfully submit that the Court should grant their Motion for Reconsideration and either vacate its Order of dismissal entered on March 19, 2010, or amend that Order to provide leave to the Plaintiffs to amend their First Amended Complaint.

Respectfully submitted,

_____

R. Martin Palmer

Date Filed: April 16, 2010

UNITED STATE DISTRICT COURT
DISTRICT OF MARYLAND
6500 CHERRYWOOD LANE
GREENBELT, MARYLAND 20770

Peter J Messitte

Judge

MEMORANDUM

To Counsel of Record

From Judge Peter J. Messitte

Re: Doe v Shalala

Civil No. PJM 99-2428

Date February 26, 2001

* * * * * * * * *

For the reasons set forth at this afternoon's hearing, the Clerk is directed to ADMINISTRATIVELY CLOSE this case. Defense counsel shall advise Plaintiffs' counsel and the Court every sixty days hereafter regarding the status of the Human Pluripotent stem Cell Research Guidelines. Accordingly, Defendants' Motion to Continue Hearing for 60 Days is MOOT.

Despite the informal nature of this ruling, it constitutes an Order of the Court and the Clerk shall docket it accordingly.

/s/ Peter J Messitte
Peter J Messitte
United States District Judge

cc: Court File

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MARY DOE, a human embryo "born" in the United States (and subsequently frozen in which state of cryop-reservaton her life is presently suspended) individually and on behalf of all other frozen human embryos similarly situated; THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF PREBORN CHILDREN,
Plaintiffs-Appellants,

v. No. 01-1298

DONNA E. SHALALA, in her official capacity as Secretary of Health and Human Services; U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES; HAROLD VARMUS, in his official capacity as Director of the National Institutes of Health; NATIONAL INSTITUTES OF HEALTH, *Defendants-Appellees.*

NATIONAL ORGANIZATION FOR EMBRYONIC LAW,

Amicus Curiae.

Appeal from the United States District Court
for the District of Maryland, at Greenbelt
Peter J. Messitte, District Judge
(CA-99-2428-PJM)
Submitted January 23, 2002
Decided: February 7, 2002
[Entered: February 7, 2002]

Before WIDENER and KING, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

COUNSEL

R. Martin Palmer, Jr., MARTIN PALMER ASSOCIATES, Hagerstown, Maryland, for Appellants. Robert D. McCallum, Jr., Assistant Attorney General, Thomas M. DiBiagio, United States Attorney, Larry D. Adams, Assistant United States Attorney, Mark B. Stern, Thomas M. Bondy, Appellate Staff, Civil Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellees. Clifford J. Stevens, NATIONAL ORGANIZATION FOR EMBRYONIC LAW, Virginia Dale, Colorado, for Amicus Curiae.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM.

Mary Doe, a human embryo 'born' in the United States (and subsequently frozen in which state of cryop-reservation her life is presently suspended), individually and on behalf of all other frozen human embryos similarly situated, and the National Association for the Advancement of Preborn Children (collectively "Appellants") appeal the district court's order administratively closing their civil lawsuit challenging Clinton

Administrations policies regarding federal funding of human stem cell research. We dismiss the appeal for of jurisdiction because the order is not appealable.

This court may exercise jurisdiction only over orders, 28 U S C. S 1291 (1994), and certain interlocutory collateral orders, 28 U.S.C S 1292 (1994); Fed. R. Cii 54(b); Cohen v. Beneficial Indus. Loan Corp., 337 U.S. (1949). The order here appealed is neither a final order an appealable interlocutory or collateral order. It m removes the case from the district courts active docket, the issue of federal funding for stem cell research is se by the Bush Administration.

We therefore dismiss the appeal as interlocutory dispense with oral argument because the facts and I contentions are adequately presented in the materials befor the court and argument would not aid the decision process

DISMISSED

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

111th CONGRESS
1st Session

H.R. 3590

AMENDMENTS

Decemeber 24, 2009

Ordered to be printed as passed

In the Senate of the United States,

December 24, 2009

Resolved, That the bill from the House of Representatives (H.R. 3590) entitled "An Act to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of Armed Forces and certain other Federal employees, and for other purposes.", do pass with the following.

Amend the title so as to read. "An Act entitled The Patient Protection and Affordable Care Act."

AMENDMENTS:

Strike out all after the enacting clause and insert:

"1 SECTION 1. SHORT TITLE;
TABLE OF CONTENTS.

The Table of Contents itself is 15 pages long followed by 2,407 pages of the bill. TITLE IX — REVENUE PROVISIONS deals with some of the revenue-raising aspects of the bill.

Speaker of the House Nancy Pelosi told the House they needed to pass this Senate bill so they could learn what was in it. We have not been informed of the names of responsible parties who crafted it, and Petitioners are not able to discover this information without interrogatories. It is doubtful that there are many people in the nation (including the Chief Executive and those he persuaded to vote for it) who have read it.

The proposed bill was not posted on the internet as it was being considered because they said the American people would not understand it. Your Petitioners feel this was an insult to the citizens of our democracy!

As of this writing, the final bill as passed and signed is **not** yet **available** on the government website. Congressman Roscoe Bartlett's office (located in the same city and one block from your Petitioners' attorney's office) was contacted to enlist the Representative's assistance in obtaining a copy of the bill We were told by staff that they did not have a copy and had not themselves been able to locate it on the government website Finally, a staffer was able to locate something on the internet, which they emailed us, and we printed off the 2,407 pages of what purports to be the bill (the staffers cautioned they could not be sure it was the official version) which begins with a 15-page Table of Contents above referenced.

Interrogatories are needed to obtain from Respondent a true-test copy of the bill signed by him binding all Americans and their physicians. In the

present state of affairs since no one appears to have read it and different copies are floating around, addendums or changes could turn up in this bill in the future, and when a member of Congress says that they never would have voted for the bill had they known that provision was buried within it, the reply they will get is that they had an obligation to read it first and should have done so. Such a state of affairs, it is respectfully proffered, is unbelievable in America in the year 2010. If we were back in the days of the Declaration of Independence and the Constitutional Convention when everything had to be written by hand with a quill pen and copies had to also be made by hand (Thomas Jefferson tried his hand at inventing a writing machine that would automatically make one copy, but it was more for his personal use and is on display at Monticello) — if we were back in the 1700's when the only way to make copies available to the general public was the laborious process of hand typesetting each and every page, this would be excusable. We live in an age, however, when this bill could have been posted on the internet for all Americans to read and comment upon as it was laboriously forced through the Congress. Are we still a **Democracy** or have we become an Oligarchy? Why is it that members of this hypothetical oligarchy, for reasons best known to themselves, after a pledge of "transparency" have chosen to keep us in the dark? To this date, locating a final, true-test copy of the bill as ceremoniously signed with numerous pens is akin to the shell-and-pea game at the county fair. It is respectfully proffered that something needs to be done to stop the music on this thing (and as the last step on the appellate ladder the Court and the Court alone can quell the fury that is beginning to build out there in the nation just as **Chief Judge Rehnquist** stepped in at the time of the Florida vote and the "dimpled chad" and restored order).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

DANIEL G ANDERSON, et al.,

Plaintiffs

v

BARACK OBAMA,

Defendant

Civil Case No.8.10-CV-0017

AFFIDAVIT

STATE OF MARYLAND, COUNTY OF WASHINGTON, to-wit:

COMES NOW, RICHARD P. DELANEY, M D., and makes affidavit as follows:

Diogenese would be distressed in today's America. His claim was that virtue is the only good and that all else can be good only within the context of virtue The story runs that he searched in vain for the honest man. That was Athens two thousand years ago. Should he roam the halls of our Capitol today with his legendary lamp, it would not penetrate the murk of the locked door, bribery strewn, shady deals destroying American medicine as our doctors have known and practiced it these many years. They are destroying, in fact, a way of life; literally. There are many paths to the concentration of power in a centralized government. The present Administration and Congressional majority seems to be trying them all. The socialization of medicine is probably

the most efficient tool in achieving that lamentable end. I deplore the loss of the practice of medicine as we have known it and the harm that socialized medicine will do to my patients.

We are now engaged in a clatter of debates resulting, I believe, from the atrophy of our social fiber Perhaps the most glaring, the most dangerous debate involves that unavoidable problem, that eventuality which intrudes on our lives in the best and worst of times. I speak of the burden of sickness It is a question of how and why a sick person seeks out his trusted physician when sickness visits uninvited. Sickness is intensely personal. It shrinks from statistics and generalities. When you are sick or have a reason to think that you are, there comes about a type of isolation, a derailment of a sort You have a need to get your life back on the right track. You seek the help of the doctor who knows you. You trust him to know what to do, when and how to do it. If it is beyond his ability, you can trust him to find the needed specialty care. The tendency to refer to a doctor as "my doctor" is an expression of that personal trust. He knows you, and you can be sure that he has your best interests behind his decisions. The bond between the patient and the physician has been bound by sacred oath for over two thousand years. The oath of Hippocrates still applies, and the patient rightly expects no less.

Ordinarily, as in the case of an acute not so serious illness, the path to wellness may be an easy one The sore throat or bruised knee is easily diagnosed, treated and just as easily forgotten. It may be, though, that the illness is chronic as in diabetes or high blood pressure. The path then to a normal life involves altering some habits, taking needed drugs and periodic monitoring. Personal life then proceeds basically unaltered. However the diagnosis may also be of an incurable illness with a prognosis of the patient dying within a certain period of time. It is here

that the physician who has known us in our acute and chronic illnesses has come to have an awareness of our family, friends and way of being It is precisely here that "my doctor" is best able to come to my aid and see me through . . . whatever the circumstances. This is said, and needs to be said, to point out that the doctor-patient relationship carries with it an incalculable value and responsibility. It is a value not to be denied without doing grave injustice. Strangely, that bond between the doctor and the sick person is barely mentioned in the thousands of unexamined pages of "medical reform." Yet it is here exactly that the art and science of medicine meets and is made present to the person who needs it now. Think about that.

In my life of medical practice extending over half a century, I have never experienced a situation in which a patient was denied treatment because of poverty A typical expression to the specialist when referring such a patient might have been: "You will have to do this one for the glory of God " I have never had a refusal. Hospitals have also extended the proverbial helping hand with needed rate reductions or complete elimination of fees. For the mere asking, my own hospital has accepted carte blanche several patients even imported from poor foreign countries specifically for diagnosis and treatment No question of payment was ever raised. It cannot have been a unique occurrence. Physician friends, some of whom have retired, continue regular schedules, dedicating their impressive skills (completely on a voluntary basis) to caring for the poor They have maintained their licenses specifically for this purpose. There are several such groups of doctors in our area, and I have not the slightest doubt that the practice is repeated across the nation. Such is the bond of a doctor and patient, and such is the dedication of the American doctor to his art and its practice.

The multiple so-called "medical reform" plans coming out of Congress have nothing in the slightest to do with American medicine except to insure its demise while concentrating power in a centralized federal government. Without doubt, it will eliminate that sacred binding of the dedicated physician and the sick patient. It will certainly insure that doctors who can retire will do so as quickly as possible, and they will remain retired. The sick patient will be forced into an impersonal system. It will be a system that knows not his name and is operated by clock-watching civil servants. You will take your turn and wait your turn with your waiting extending to months or even years. That onerous system is plainly to be seen all over the world where socialized medicine is practiced. The evidence is clear. You have only to examine it. I need not boast of the quality of medicine practiced in our America. It speaks volumes for itself, and we are justified in being proud of it. It will be missed.

There are worlds more to learn about this art than when I went to medical school a half century (and then some) ago. The learning tree is higher, and it is correspondingly harder to climb. Fewer young students will be motivated to make that climb merely to become a government functionary. They will be asked to become the tool of a plan or an amalgam of plans that our elected representatives passed without even bothering to read. It is a plan passed with the urging of twisted arms, pork barrel handouts and odious bribes. It is a plan deviously enacted in midnight sessions that could not stand the light of day. The budding physician will look forward to a career as a system functionary beholden to a civil service regime more interested in the concentration of power into its own hands than in the helping of the sick. If there is anyone who believes that this socialized structure is designed to attract and encourage bright young Americans to embrace the rigors of medical education, I marvel at his credulity

Since socialization of medicine has nothing to do with medicine and everything to do with socialism and the concentration of power in the state, better it might be to go to law school and try to get elected to Congress.

Yes, we have indeed changed in many ways It must be so. Yet, there are facets of culture that are embedded in truth and must not change. They provide the framework for our code of morality necessary for our continued adherence to life, liberty and the pursuit of happiness.

We physicians question deeply that the framers of our Constitution had any thought of denying free citizens access to the legitimate medical care of their own choosing.

We deny that Congress is privileged to force physicians to practice medicine deficiently as would be mandated by currently proposed health care plans

We deny that this usurpation of power and denial of freedom is embedded in any way in our Constitution.

We hereby beg that the constitutionality of government imposition into medicine be affirmed or denied by our unelected judiciary before being signed into law.

/s/_____
Richard P Delaney, M D

State of Maryland
County of Washington

Subscribed and sworn to before me this 4th day of January, 2010, at Hagerstown, Maryland.

/s/_____
Notary Public

My Commission Expires:
4/21/12

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

DANIEL G. ANDERSON, et al.,
Plaintiffs

v

BARACK OBAMA,
Defendant

PJM 10-CV-0017

SUPPLEMENTAL AFFIDAVIT

STATE OF MARYLAND, COUNTY OF WASHINGTON, to-wit.

COMES NOW, RICHARD P DELANEY, M.D., and makes affidavit as follows

The sitting Congress of the United States, both houses, has made a mockery of the Origination Clause of our heretofore beloved Constitution. It may, if you like, now be despised and shuffled like a deck of cards in the hands of some poker shill who deals to himself any hand he wants. Has it now become "A tale told by an idiot (our patriots) — full of sound and fury; signifying nothing?" Not many of our countrymen are aware that the title of the ObamaCare legislation does not in the slightest degree refer to medical care. "Resolved, that the bill of the House of Representatives **(H.R. 3590) "An Act to amend the Internal Revenue Code of 1986 . . . etc . . . do pass with the following AMENDMENTS: Strike out all after the enacting clause and insert."** What was then **inserted** was the entire ObamaCare bill exclusively argued and passed in the Senate only. Every word, comma, jot and tittle was included: nothing was omitted, and the dealer had a royal flush

The first patient that I encountered in practice over fifty years ago was a twelve-year-old boy who had been bitten by a copperhead. The last one treated was a ninety-four-year-old man seen in the office last night. He is almost completely blind, but his mind is brighter than sunlit show. He has been a patient almost all of those wonderful years, and I have seen his doctor through myriad illnesses. I suppose he has been treated by every type of specialist in the Physician Directory, but through it all, it has been my privilege to be his "doctor." Last night's visit was a little prolonged as we reminisced a bit and I had to promise not to retire. The point is that I have had a long and intimate experience with the doctor-patient bond. This deeply personal covenant is indispensable to the practice of medicine. It is in fact the essence, the heartbeat of medicine.

Government control will end all of that. The funding, the restrictions, the scheduling, the documentation, the rationing, the delays, the endless government intrusions will certainly change the face of American medicine. Fewer doctors will be seeing more patients. It is already difficult to accept Medicare patients. On July 1st of this year the Medicare reimbursement for doctors is to be decreased by 21%, thus necessarily rationing medicine. Logically, with less, a doctor can do less. Yet the significance of this pales in comparison to the five hundred billion dollars that ObamaCare plans to take out of Medicare while covering thirty million additional patients.

Mine has been a particularly graced life. Between the snake-bitten boy and the blind old man it has been a stage on which was played a dozen human dramas daily, and if I have been able to help a bit, I'm grateful to God for the chance. That's the role of the doctor but only in the context of the doctor-patient relationship. ObamaCare is a bastard bill sneaking out of a dark closet on (of all

nights) Christmas Eve. It is the fruit of chicanery and makes a shard of our Constitution. It is thus a matter of urgency that our bill of complaint be adjudicated promptly.

/s/_____

Richard P. Delaney, M D

State of Maryland
County of Washington

Subscribed and sworn to before me this 19th day of May, 2010, at Hagerstown, Maryland.

/s/_____

Notary Public

My Commission Expires:

4/21/12

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

DANIEL G ANDERSON, et al ,

Plaintiffs

v.

BARACK OBAMA,

Defendant

Case No 8:10-CV-0017

AFFIDAVIT

STATE OF MARYLAND, COUNTY OF WASHINGTON, to-wit:

COMES NOW, RONALD USCINKSI, M.D., and makes affidavit as follows:

As a clinical neurosurgeon with nearly four decades of experience, I have witnessed many changes in medicine I can say with absolute certainty that there are no changes as large or as devastating to the profession or to patients as the recently enacted health-care legislation from our Congress, signed into law by the President. The Hippocratic Oath taken by myself and by generations of my physician forebears has lasted through history for one simple reason, this being that it works. It defines the doctor/patient relationship It is part of our culture, not as Americans, not as western civilization, but as members of the human race. Once again, for emphasis, it works.

I have no doubt whatsoever that this legislation, no matter how cleverly crafted or adamantly enforced, will eventually fail. Doctor do what they do for the benefit of their patients, and quite simply, ultimately they are going to answer to their patients and not the state, laws

notwithstanding Hence, these laws will fail, as they have for thousands of years. The real tragedy is what we professionals as physicians and our patients are going to have to endure before the proposed system collapses under its own weight of impossibility. Doctors cannot and ultimately will not serve two masters — their patients and their government. We saw the first glimmerings of this dilemma with the advent of third party medicine via insurance companies, and it is now coming to full bloom.

As a clinical professor of neurosurgery, I have been involved with neurosurgical education for over 30 years. This has afforded me the opportunity to watch and participate in the training of young neurosurgeons, a group of highly motivated, supremely skilled individuals who voluntarily and happily put in close to a decade of training after medical school before they begin their actual careers, and begin these careers with a level of training and skill I dare say exceeds that of any politician at the beginning of their own career As recently as today, I interacted with neurosurgical trainees in two separate academic programs. Those nearing completion of their training have honed their skills and judgment in and out of the operating room to an astonishing level of competence, a level that would be the envy of any other profession. And yet, after all this training, and for the first time ever, I have witnessed their real uncertainty about their future and the future of their profession With this legislation the restrictions upon the ability of a physician, particularly one as skilled as a neurosurgeon, to exercise comprehensive and sober clinical judgment in a high-risk setting is compromised to a hitherto unheard of degree. They (we) are even cautioned as to what extent and even how to prepare a patient's head to undergo surgery, and having researched the guidelines instigating such cautions myself, it is clear that the majority of such guidelines are made by non-neurosurgeons and probably

non-physicians. This is not good patient care and furthermore in the long run is a most unwise expenditure of time, resources, and taxpayer money

Once again, this will fail. But we will pay a heavy and bitter price before the promulgators of this sea change learn. Pity.

/s/_____
Ronald Useinksi, M.D.

STATE OF MARYLAND, COUNTY OF WASHINGTON

Subscribed and sworn to before me this 19th day of May, 2010, at Hagerstown, Maryland

/s/_____
Notary Public

My Commission Expires:

4/21/12

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

DANIEL G. ANDERSON, et al.	)	
	)	
	)	
Plaintiffs	)	
	)	Case No 8:10-CV-0017
v.	)	
	)	
BARACK OBAMA,	)	
	)	
Defendant	)	

AFFIDAVIT

STATE OF MARYLAND, COUNTY OF WASHINGTON, to-wit:

COMES NOW, JENNIFER R. BOYER, and makes affidavit as follows

I am 24 years old I have spent countless hours in high school and college preparing myself for the challenge of medical school and a career as a physician. I wanted to become a doctor so I could counsel and treat patients on a professional level, with the hope that every once in a while I could change, improve and even save people's lives

I received an offer of admittance to medical school in the spring of 2009. I deferred my acceptance and have spent almost a year analyzing the cost of my dream against the benefit. The average medical school student will acquire nearly $200,000 in debt over four years of rigorous coursework. Additionally, medical students willingly trade four years of their young lives for the vast knowledge required to effectively treat patients

Until this past year, I would have gladly taken on the debt and the workload necessary to fulfill my dream because the relationships that doctors develop with their patients over an entire career are invaluable. But—Obama's health care plan will make doctors nothing more than a name on a list of providers. The level of care doctors are able to provide will be limited to the allowed services on government-funded health insurance plans.

At this point, I ask myself, "Why should I take on the debt, make the personal sacrifices, and spend the time to become a physician? I will most likely end up as a subordinate, catering to someone else's ideas." Honestly, in this political climate, I think it makes more sense to become a Physician's Assistant. I could still see patients and impact lives, but I can reach that point in less than half the time with less than half the debt and only a fraction of the headaches

Obama's decision to tackle health care reform so quickly and with so little thought to the future of America's doctors is taking away many of the incentives that drive bright, young students to pursue a career in medicine Such a decision should not be made lightly because it could have a drastic impact on the future of medicine

/s/_____

Jennifer R Boyer